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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 1188.

JEROME F. MANNING, PLAINTIFF IN ERROR,

vs.

ASA FRENCH.

IN ERROR TO THE SUPERIOR COURT OF THE STATE OF MASSACHUSETTS.

FILED AUGUST 7, 1889.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, NOVEMBER 11, 1889.

1 To the Honorable Lincoln Flagg Brigham, chief justice of the superior court of the Commonwealth of Massachusetts:

Respectfully represents Jerome F. Manning, of Lowell, in the county of Middlesex and Commonwealth of Massachusetts, that he is a citizen of the United States and of the State of Massachusetts; that he is the plaintiff in a certain action of tort in the superior court in and for said county of Middlesex in which Asa French, of Braintree, in the county of Norfolk and Commonwealth aforesaid, and others, are defendants, but that said French is the only one of said defendants upon whom the plaintiff was able to make service of a summons in said action; that the amount involved in said action, exclusive of all costs, exceeds the sum of five thousand dollars; that said defendants formerly acted as judges of the court of commissioners of Alabama claims, and the plaintiff was employed, for valuable considerations, by divers claimants having claims of the several classes cognizable by said court of commissioners of Alabama claims to prosecute, and had the right to prosecute their respective claims before said court of commissioners of Alabama claims and to receive liberal compensation for his services therein, but that the defendants, including said French, on July 29, 1885, promulgated and enforced a certain order and thereby prohibited and prevented the plaintiff from prosecuting said claims, and that said action is brought to recover compensation for the losses and injuries sustained by the plaintiff by reason of the promulgation and enforcement of said order; that said defendant, French, claimed that he and the other defendants had authority to make and enforce said order under the act of Congress, approved June 23, anno Domini 1874, entitled "An act for the creation of a court for the adjudication and disposition of certain moneys received into the

2 Treasury under an award made by the tribunal of arbitration constituted by virtue of the first article of the treaty concluded at Washington the eighth of May, anno Domini eighteen hundred and seventy-one, between the United States and the Queen of Great Britain," and under the act of Congress, approved June 5, anno Domini 1882, entitled "An act re-establishing the court of commissioners of Alabama claims, and for the distribution of the unappropriated moneys of the Geneva award;" that said superior court decided that said defendants had such authority under said acts; that upon exceptions taken by the plaintiff to the supreme judicial court of said Commonwealth said last-named court sustained the decision of said superior court and overruled said exceptions, and that said superior court, on July 1, 1889, rendered final judgment for said defendant, French; that said superior court is the highest court in said Commonwealth in which a decision in said action could be obtained; that said action involves divers Federal questions, one of which is whether said acts of Congress authorized said defendants to promulgate or enforce said order, and another of which is whether so much of said acts of Congress as undertake (if any part thereof undertake) to authorize the defendants to make such order was not in violation of articles V and VIII of the amendments of the Constitution of the

United States, and the decision of said State court was adverse to the plaintiff's contention upon all of said Federal questions.

And for a fuller enumeration of the errors made by said State courts the plaintiff refers to the assignment of errors, which, together with exemplified copy of the entire record in this case, is hereto annexed.

Wherefore said Manning prays for a writ of error from the Supreme Court of the United States to the chief justice and associate justice of the superior court of said Commonwealth, com-
3 manding them, under their seal, to send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, at Washington, and for such further orders and decrees as to your honor shall seem meet, and that said final judgment rendered July 1, 1889, be reversed.

JEROME F. MANNING,
Plaintiff in Error.

COMMONWEALTH OF MASSACHUSETTS, *Middlesex*, } *ss:*

Superior Court, 1889.

JEROME F. MANNING
v.
ASA FRENCH.

Assignment of Errors.

And now comes the plaintiff in error, and, for an assignment of errors by said court in this case, assigns the following:

First. That it was error to refuse the first ruling prayed for in the plaintiff's prayers for rulings and to hold that said court of commissioners of Alabama claims had authority to issue and enforce said order of July 29, 1885.

Second. That it was error to refuse the second ruling prayed for in the plaintiff's prayers for rulings.

Third. That it was error to refuse the third ruling prayed for in the plaintiff's prayers for rulings.

Fourth. That it was error to hold, as said State courts did, that, because the court of commissioners of Alabama claims had authority to make rules for regulating the forms and modes of procedure before it, it therefore had, as included within this grant of power, the authority to make rules for the creation of a bar and for the admission (and exclusion) of persons to prosecute claims
4 before said court as agents or attorneys of claimants.

Fifth. That it was error to hold, as said State courts held, that the court of commissioners of Alabama claims had power to determine whether an attorney practicing before it was a fit person to remain in practice before it and, at its discretion, to prevent him from practicing before it.

Sixth. That it was error to hold, as said State courts held, that the proceedings against the plaintiff declared on in his declaration were not in the nature of proceedings for contempt.

Seventh. That it was error to hold, as said State courts held, that the suspension or disbarment of an attorney for official misconduct is not punishment.

Eighth. That it was error to construe the statutes passed by Congress establishing and re-establishing the court of commissioners of Alabama claims as granting to it the power to determine who should practice before it as attorney-at-law or as attorneys-in-fact.

Ninth. That it was error to hold, as said State courts held, that Congress had the right to confer this power exclusively upon that court to be exercised as a judicial power.

Tenth. That it was error to hold that said court of commissioners of Alabama claims had authority to prevent the plaintiff from practicing before it for the causes for which it did so prevent him.

Eleventh. That it was error to hold, as said State courts held, that said court of commissioners of Alabama claims had authority to prevent the plaintiff from prosecuting before it the claims of claimants employing him to prosecute the same before it in the manner in which they did so prevent him in this case, upon a complaint informally made by it to itself, the judges of said court of commissioners of Alabama claims, sitting simultaneously as judges, accusers, and prosecutors of the plaintiff, for alleged wrong doings affecting themselves.

JEROME F. MANNING,
By CHARLES COWLEY,
His Attorney.

Bond on Writ of Error.

Know all men by these presents that we, Jerome F. Manning, as principal, and Harry R. Rice & Charles Stearns, all of Lowell, county of Middlesex, Commonwealth of Massachusetts, as sureties, are held and firmly bound unto Asa French, of Braintree, county of Norfolk, Commonwealth of Massachusetts, in the full and just sum of two hundred & fifty dollars, to be paid to the said Asa French, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated the fifth day of July, in the year of our Lord one thousand eight hundred and eighty-nine.

Whereas lately, at a sitting of the superior court in & for the county of Middlesex, Commonwealth of Massachusetts, in a suit depending in said court between Jerome F. Manning aforesaid & the said Asa French, judgment was rendered against the said Jerome F. Manning for fifty-two dollars & twenty-seven cents, costs of suit, and the said Jerome F. Manning having procured a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Asa French, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, A. D. 1889:

Now, the condition of the above obligation is such that if the said Jerome F. Manning, plaintiff in error aforesaid, shall prosecute his said writ of error to effect and answer all costs if he fails to make his plea good, then the above obligation to be null and void; otherwise to remain in full force and virtue.

JEROME F. MANNING. [L. S.]
HARRY R. RICE. [L. S.]
CHARLES STEARNS. [L. S.]

Signed, sealed, and delivered in presence of—
ALICE E. MANNING.
July 12, 1889.

Approved:
LINCOLN F. BRIGHAM,
Chief Justice Superior Court.

[Endorsed:] Jerome F. Manning, pl'ff in error, *vs.* Asa French, def't. Bond for costs on writ of error.

7 UNITED STATES OF AMERICA, *ss:*

Seal of the Circuit Court Massachusetts.

The President of the United States to the honorable the judges of the superior court of the Commonwealth of Massachusetts, holden at Cambridge, within and for the county of Middlesex, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said superior court, before you or some of you, being the highest court of law or equity of the State of Massachusetts in which a decision could be had in the suit between Jerome F. Manning, plaintiff, and Asa French *et als.*, defendants, in a plea of tort, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States, and the decision was against their validity, or wherein was drawn in question the validity of a statute of or authority exercised under said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Manning, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme

Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the sixth day of July, in the year of our Lord one thousand eight hundred and eighty-nine.

JOHN G. STETSON,
Clerk of the Circuit Court of the United States,
District of Massachusetts.

Allowed by—
LINCOLN F. BRIGHAM,
Chief Justice of Superior Court.

8 COMMONWEALTH OF MASSACHUSETTS, } ss:
Middlesex, }

And now here the judges of the superior court of the Commonwealth of Massachusetts make return of this writ by annexing hereto and sending herewith, under the seal of the said superior court, a true and attested copy of the record and proceedings in the suit within mentioned, with all things concerning the same, to the Supreme Court of the United States, as within commanded.

Seal of the Superior Court.

In testimony whereof I, Theodore Hurd, clerk of said superior court, have hereto set my hand and the seal of said court this ninth day of July, A. D. 1889.

THEO. HURD, *Clerk.*

9 COMMONWEALTH OF MASSACHUSETTS:

I, Lincoln F. Brigham, chief justice of the superior court of the Commonwealth of Massachusetts, do certify that Theodore C. Hurd, Esq., whose signature is affixed to the papers hereunto annexed, is clerk of said superior court for the county of Middlesex and hath the keeping of the files, records, and proceedings of said court within and for said county; also of the late court of common pleas within and for said county; that he is by law the proper person to make out and certify copies of the files, records, and proceedings of said several courts; that full faith and credit are and ought to be given to his acts and attestations done as aforesaid, and that his attestation to the papers hereunto annexed of the files, records, and proceedings of the said superior court is in due form.

In testimony whereof I have set my hand and caused the seal of said court to be hereunto affixed this first day of July, in the year of our Lord one thousand eight hundred and eighty-nine.

[Seal of the Superior Court.]

LINCOLN F. BRIGHAM,
Chief Justice of the Superior Court.

10 COMMONWEALTH OF MASSACHUSETTS, *Middlesex*, } *ss:*

To all persons to whom these presents shall come, Greeting:

Know ye that among our records of our superior court within and for the county of Middlesex, anno Domini 1889, it is thus contained, to wit:

COMMONWEALTH OF MASSACHUSETTS, *Middlesex*, } *ss:*

[L. S.] To the sheriffs of our several counties or their deputies, Greeting:

We command you to attach the goods and estate of Asa French, of Braintree, in our county of Norfolk; James Harlan, of Mount Pleasant, in the State of Iowa, and Andrew S. Draper, of Albany, in the State of New York, to the value of one hundred thousand dollars, and summon the said defendants (if they may be
11 found in your precinct) to appear before our justices of our superior court, at Cambridge, within and for our said county of Middlesex, on the first Monday of October next, then and there in our said court to answer unto Jerome F. Manning, an attorney and counsellor at law, of Lowell, in said county of Middlesex, in an action of tort, to the damage of the said plaintiff (as he saith) the sum of one hundred thousand dollars, which shall then and there be made to appear with other due damages; and have you there this writ with your doings therein.

Witness Lincoln F. Brigham, Esq., at Cambridge, the twenty-third day of June, in the year of our Lord one thousand eight hundred and eighty-seven.

THEO. C. HURD, *Clerk.*

12 Upon which writ the officer serving the same made the following return, to wit:

NORFOLK, *ss:*

STOUGHTON, *August 11th*, 1887.

By virtue of this writ, I this day, at two o'clock and thirty minutes p. m., attached all the right, title, and interest the within-named Asa French has in and to any and all real estate in the county of Norfolk, and on the same day attached a chip as the property of the within-named James Harlan and Andrew S. Draper, and on the seventeenth day of September, 1887, left a summons of this writ at the last and usual place of abode of said French for his appearance at court, as within required, and have made diligent search, but am unable to find either said Harlan or Draper within this Commonwealth, or their last and usual place of abode, agent, or att'y of either said Harlan or Draper.

ABRAM C. PAUL,
Deputy Sheriff.

13 At which said October term the plaintiff appeared, by Charles Cowley, Esquire, his attorney, and entered the action.

The plaintiff says that during the whole of the year eighteen hundred and eighty-five and for many years prior thereto and ever since the plaintiff was and still is an attorney and counsellor at law, duly qualified and admitted to practice as such in all the courts of this Commonwealth, in the Supreme Court of the United States, in the Court of Claims of the United States, and in the court of commissioners of Alabama claims of the United States, which was

14 established by an act of Congress approved June 23, 1874, and re-established by an act of Congress approved June 5, 1882.

That as such attorney and counsellor at law the plaintiff actually presented and prosecuted to final judgment before said last-mentioned court of commissioners the claims of more than fourteen hundred claimants and beneficiaries, and thereby earned and became entitled to receive from them divers sums of money, amounting in all to two hundred thousand dollars and upwards.

That during said year eighteen hundred and eighty-five said Asa French, said James Harlan, and said Andrew S. Draper, jointly and severally, falsely pretended to be judges of said court of commissioners of Alabama claims and actually acted as judges thereof, though in truth and fact neither of them was a judge thereof.

That on the twenty-ninth day of July, in said year eighteen hundred and eighty-five, said Asa French, said James Harlan, and said Andrew S. Draper, falsely pretending to be judges of said court of commissioners of Alabama claims and actually acting as judges thereof, unlawfully, wrongfully, maliciously, jointly and severally, made and issued to the plaintiff and to the people at large a certain unlawful, pretended order prohibiting the plaintiff from appearing and acting in said court of commissioners of Alabama claims in relation to any matter of business therein pending and from exercising in any way the functions of an attorney and counsellor of said court of commissioners of Alabama claims, and that on said twenty-ninth day of July, and from day to day thereafter until the thirty-first day of December, in said year eighteen hundred and eighty-five, said Asa French, said James Harlan, and said Andrew S. Draper, falsely pretending to be judges as aforesaid and actually acting as such, jointly and severally, unlawfully, wrongfully, and maliciously carried out and enforced said pretended order against the plaintiff, and thereby from day to day from said twenty-

15 ninth day of July to said thirty-first day of December actually prevented the plaintiff from acting as an attorney and counsellor in or before said court of commissioners of Alabama claims or in relation to any matter of business pending therein.

That the plaintiff was thereby deprived of the compensation which he had earned for services performed and disbursements made prior to said twenty-ninth day of July in the claims presented and prosecuted by him as aforesaid, and was deprived of the opportunity to perform other services and to earn further compensation therein, and was deprived of valuable liens which he had acquired on divers

judgments rendered therein and on divers drafts issued from the Treasury of the United States in payment thereof, and was in divers other ways grievously injured.

16 The defendant, Asa French, appeared by Mess. C. T. & T. H. Russell, his attorneys, on the 27th day of October, 1887, and filed his answer, to wit:

"And now comes Asa French, one of the defendants, and, for answer, denies each and every allegation in the plaintiff's writ and declaration contained as fully and to the same extent as though a specific denial was here made to each allegation."

On the 22d day of May, A. D. 1888, the cause was submitted to the court, who, after a full hearing, found for the defendant.

Whereupon the plaintiff, being aggrieved by the rulings, opinions, and directions of the court in matters of law, alleged exceptions thereto, which, being reduced to writing, were filed with the clerk, presented to the court, and allowed by the presiding judge in the words following:

Seal of the Superior Court.

17 COMMONWEALTH OF MASSACHUSETTS, *Middlesex*, } *ss:*

Superior Court. March Sitting, 1888.

JEROME F. MANNING
vs.
ASA FRENCH *et als.*

Plaintiff's Exceptions.

This is an action of tort. The declaration is a part of these exceptions. The defendant French, for answer, denied each and every allegation in said declaration. No service was made upon either of the other defendants.

At the trial, which was without a jury, it appeared that the plaintiff in 1885 was and for many years had been an attorney and counsellor at law duly admitted to practice in the Supreme Court of the United States, in the Court of Claims of the United States, and in all the courts of this Commonwealth; that he acted as an attorney and counsellor before the court of commissioners of Alabama claims, commencing in January, 1875, and ending July 29, 1885; that he presented and prosecuted before said court of commissioners about seven hundred and fifty petitions of the class known as "Alabama claims," representing about fourteen hundred claimants and beneficiaries, and thereby became entitled to receive from said claimants and beneficiaries divers sums of money, amounting in all to

18 many thousands of dollars; that the court of commissioners of Alabama claims was established by act of Congress approved June 23, 1874, chapter 459; re-established by another act approved June 5, 1882, chapter 195, and continued by another act approved June 3, 1884, chapter 62; that in 1874 said court of commissioners adopted, among other rules, the following: "Rule V. Any person

of good moral character admitted to practice as attorney or counsel in the supreme court of any State or Territory or the District of Columbia or in any of the Federal courts, on filing with the clerk a written statement of the date and place of such admission, with his name and post-office address in full, may, on motion, be admitted to practice in this court;" that on January 26, 1875, the plaintiff was, on motion of Robert M. Corwine, Esquire, admitted to practice in said court of commissioners, and that on October 5, 1882, said court of commissioners adopted certain additional rules, among which was the following: "Rule XIV. All attorneys admitted to practice in the court of commissioners of Alabama claims as created under the law of Congress approved June 23, 1874, will be recognized as attorneys in this court; re-established under law of Congress approved June 5, 1882;" but the plaintiff claimed that said rules five and fourteen were unauthorized and of no effect, and that the said court of commissioners had no power to create a bar or to admit attorneys thereto or to expel them therefrom.

The following "record of proceedings *In re* Jerome F. Manning" in said court of commissioners, duly attested, was put in evidence:

Court of Commissioners of Alabama Claims.

Copy of Record of Proceedings In re Jerome F. Manning.

FRIDAY, *July* 24, 1885.

The court of commissioners of Alabama claims met according to adjournment.

19 Present: Hon. James Harlan, presiding judge; Hon. Asa French, Hon. A. S. Draper, associate judges.

The following order was passed by the court:

Ordered, That because of flagrant unprofessional conduct on the part of Jerome F. Manning, an enrolled attorney and counsellor at law on the records of this court, he, being uninvited and refused admittance to its consultation-room, July 23, 1885, then occupied by the court sitting in chambers, engaged in the transaction of its official duties, nevertheless, forced his way into said room and interrupted the court in the prosecution of its official work by unseemly threats then and there uttered against one of the judges thereof, because of an official opinion delivered from the bench in open court by said judge as the organ of the court in the announcement of a decision in a case pending before it, therefore, for the purpose of preventing the occurrence of like attempted intimidations in future on the part of said Manning and preserving the freedom of the court in the discharge of its judicial duties, the said Jerome F. Manning is hereby commanded to appear before this court Saturday, July 25, 1885, at 10 o'clock a. m., and show cause, if any there be, why his name shall not be stricken from the rolls of attorneys and counsellors at law authorized to practice before this court.

The clerk of this court is hereby directed to give notice hereof to

the said Manning by causing an attested copy of this order to be served personally on him forthwith.

JAMES HARLAN,
Presiding Judge.

Attest: D. W. FESSENDEN, *Clerk.*

SATURDAY, *July* 25, 1885.

The court of commissioners of Alabama claims met according to adjournment.

Present: Hon. James Harlan, presiding judge; Hon. Asa French, Hon. A. S. Draper, associate judges.

20 The clerk, by direction of the court, read the order relating to the unprofessional conduct of J. F. Manning, Esq., an attorney of this court, and commanding him to appear before the court to show cause why his name should not be stricken from the rolls of attorneys and counsellors authorized to practice before this court, together with the return thereon showing service thereof as ordered, and called upon said Manning to answer thereto.

Mr. Manning, in reply, made a statement disclaiming any intention of interrupting or insulting the court, and asked for a postponement of the hearing thereon till Monday, July 27th, that he might be heard by his counsel, Robert Christy, Esq. The court refused such postponement, but postponed the hearing until 4 o'clock p. m.

At 4 p. m. Mr. Manning appeared before the court with his counsel, Robert Christy, Esq., who, on motion of General Creswell, was admitted to practice as an attorney of this court. Mr. Christy then filed and read affidavits of Mr. Manning and Mr. Berthoud and addressed the court in defence of Mr. Manning, and the court thereupon held the matter for advisement.

Attest: D. W. FESSENDEN, *Clerk.*

WEDNESDAY, *July* 29, 1885.

The court of commissioners of Alabama claims met according to adjournment.

Present: Hon. James Harlan, presiding judge; Hon. Asa French, Hon. A. S. Draper, associate judges.

In the matter of the order of the court, under date of July 24, 1885, requiring Jerome F. Manning to appear and show cause why his name should not be stricken from the roll of attorneys and counsellors at law authorized to practice before this court, the following statement and decree were read by Harlan, presiding judge:

In the matter of the order of this court, under date of July 24, 1885, requiring Jerome F. Manning to appear and show cause
21 why his name should not be stricken from the roll of attorneys and counsellors at law authorized to practice before this court.

The court, preliminary to announcing its final decision in said matter, now places upon its records, and directs that it shall be made a part of said records in this proceeding, the following statement:

The rule to show cause in this matter was issued by the court upon its own motion. The acts charged occurred in the presence and hearing of all the members of the court, during a temporary recess of said court, in its private consultation-room adjoining the room where its daily public sessions are held, and while it was occupied in examining cases already heard before it and making up its final awards thereon.

While so occupied, on Thursday, the 23d day of July, 1885, at or about two o'clock in the afternoon, Jerome F. Manning, an attorney of this court, accompanied by one Frederic Berthoud, entered the court building, numbered 1412 H street, in the city of Washington, D. C. They both approached the open door of said consultation-room as if about to enter, when they were accosted by the court messenger stationed at said door, who inquired what they wanted. Said Manning answered, "I want to see the court." The messenger then entered the consultation-room and delivered the message, said Manning and Berthoud meanwhile waiting in the hall. Presiding Judge Harlan replied, "Tell him that the court is busy and cannot see him at present." The messenger returned and repeated Judge Harlan's words to said Manning, notwithstanding which the two attempted to enter the door and were again told by the messenger that they must not go in, as the court was busy. They, nevertheless, pushed by him and entered the room. All this happened in the hallway, near to the open door of the room, and the conversation was plainly audible to each member of the court.

After entering the room Manning approached Judge Draper, and, in a loud and menacing tone of voice, coupled with an excited and offensive manner, said, in substance, "Judge Draper, I want
22 to see you a minute;" to which Judge Draper responded, "Well, what is it?"

The said Manning thereupon produced a proof copy of an opinion of the court delivered the day before by Judge Draper in case numbered 5549, Frederic Berthoud *vs.* The United States, and, in a threatening tone, said, "This opinion does great injury to Mr. Berthoud and I called so you can modify it before it goes out."

He then read a sentence from the opinion and said, "This is not true; there is not a particle of evidence to sustain such an assertion, and I call your attention to it in order that you may have an opportunity to correct it before the opinion is distributed." Judge Draper called his attention to the evidence upon which the statement referred to was founded and added, "Mr. Manning, I do not care to discuss this matter with you;" to which he replied, in tone and manner even more defiant and threatening than before, "Well, I have given you a chance to change it. You now have notice"—at the same time using other words of like import. After a refusal by Judge Draper to have any discussion with Berthoud, who also attempted to speak, the two men left the room.

During the entire interview the whole bearing of said Manning produced a clear impression upon the mind of each one of us that it was the purpose of said Manning then and there to induce Judge Draper to expunge said passage from said opinion, under the penalty

of future hostile proceedings against him, the precise nature of which was not then disclosed.

The expressions used, the tone of voice and manner of the respondent, were wholly irreconcilable with the statement contained in said Manning's affidavit that he had no such intent.

The statements in said affidavit that the respondent was invited to enter the room by Judge Draper; that he said to the messenger he wished to see one of the judges, and that, after entering the room, he addressed Judge Draper in a low and polite tone, are not in accordance with the facts; and the same is true of the state-
23 ments in the affidavit of the said Berthoud so far as they purport to corroborate the respondent's assertions.

Under the responsibility of our judicial oath, as judges of this court, we append our names to the foregoing statement in certification of its truth.

JAMES HARLAN,
Presiding Judge.

ASA FRENCH,
ANDREW S. DRAPER,
Associate Judges.

This state of facts compels the court to perform a very painful duty. The relations of members of the bar to the court are not of light concern. The relative duties and obligations of bench and bar are well understood. They are recognized by the intuitions of all gentlemen and do not need to be formulated and promulgated as rules of decorum to give them practical force. Their scrupulous observance is necessary to secure the proper transaction of judicial business. Happily they are seldom violated by members of the bar. This is especially true of the gentlemen of the bar admitted to practice in this court. It is painful to us to be compelled to admit that there is a single exception, and that the offence committed by him was unprovoked; that it was committed dispassionately and with deliberation, and that it has been aggravated by the character of the affidavit subscribed and sworn to by the perpetrator, almost every essential averment of which is personally known by every member of the court to be untrue.

The court is consequently reluctantly compelled to exercise the power with which it is clothed to maintain its legitimate authority and the freedom of its deliberations in the discharge of its judicial functions, and therefore enters the following decree:

The respondent having had due notice of these proceedings
24 and having been fully heard both in his own behalf and by counsel, and the court having carefully considered the whole matter, it is—

Ordered, That for the reasons set forth in the rule to show cause and in the statement accompanying this decree and made a part thereof the said Jerome F. Manning be, and he hereby is, prohibited from appearing and acting in this court in relation to any matter or

business therein pending and from exercising in any way the functions of an attorney and counsellor of this court.

This decree to stand until further order of the court.

By the court:

JAMES HARLAN,
Presiding Judge.

THURSDAY, *October* 8, 1885.

The court of commissioners of Alabama claims met according to adjournment.

Present: Hon. James Harlan, presiding judge; Hon. Asa French, Hon. A. S. Draper, associate judges.

In the matter of Jerome F. Manning, Esq., disbarred by order of court, Robert Christy, Esq., filed motion to rescind order of suspension rendered against him, as an attorney and counsellor of this court, made July 29, 1885.

Attest: D. W. FESSENDEN, *Clerk.*

THURSDAY, *October* 15, 1885.

The court of commissioners of Alabama claims met according to adjournment.

Present: Hon. James Harlan, presiding judge; Hon. Asa French, Hon. A. S. Draper, associate judges.

In the matter of Jerome F. Manning, petitioner, for rescission of order of court of July 29, 1885, the following was read by Harlan, presiding judge, a copy of which was ordered to be served on counsel for said Manning:

25 Court of Commissioners of Alabama Claims.

OCT. 15TH, 1885.

In the Matter of JEROME F. MANNING.

A motion has been presented on behalf of Jerome F. Manning asking the court to rescind its order entered July 29, 1885, prohibiting the said Manning from exercising the functions of an attorney and counsellor of this court until the further order of the court.

Upon full consideration, the court now declines to entertain the application for the following reasons, viz:

First. The statement of said Manning, accompanying said motion, does not contain an explicit retraction of the language used in his affidavit filed in this court July 25th, 1885, wherein he calls in question the truthfulness of the charges in the preliminary order of the court citing him to appear and show cause why his name should not be stricken from the rolls of attorneys practising in this court, nor does it contain any apology for the language and conduct imputed to him in said preliminary order and more fully set out in the statement of the members of the court preceding its decree of suspension.

The court will entertain no application to restore said Manning

which is not accompanied by his written statement containing, in clear and unequivocal language, such retraction and apology.

Second. It has come to the knowledge of the court that since said order was promulgated there have been published and circulated, over said Manning's name, two printed statements, one purporting to be a circular addressed to his clients, claimants in this court, dated August 6th, 1885, and the other a communication to the Daily Lowell Courier, a newspaper published at Lowell, Massachusetts, which appeared in its issue of August 1, 1885, and a copy of which was received through the mails by each member of the court. Copies of both these papers, as originally circulated, are in the possession of the court, and contain language grossly abusive of the court and in contempt of its authority.

26 No court could, with dignity or self-respect, permit any person to practice before it who had deliberately used such language with reference to its members or as to any of its decrees or orders without the most ample retraction and apology on his part, and this court will not grant any motion to restore said Manning to the privileges of its bar except upon an unequivocal denial, under oath, by him that he was the author of these papers, or upon the fullest retraction of whatever is contained in them disrespectful to the court, and an apology therefor, coupled with an assurance that, if reinstated, he will conduct himself during the future existence of the court in a manner becoming an attorney of this court.

In declining to entertain the motion now under consideration the court has deemed it proper, both for the saving of its own time and for the information of counsel who may appear in this matter hereafter, thus briefly to set out the conditions which must be complied with to induce a favorable consideration of any similar motion.

Attest: D. W. FESSENDEN, *Clerk.*

I, D. W. Fessenden, clerk of the court of commissioners of Alabama claims, do hereby certify the foregoing to be a true copy of the proceedings of said court in the matter of Jerome F. Manning, disbarred by order of court on the 29th day of July, A. D. 1885.

In witness whereof I have hereunto set my hand and affixed the seal of said court this 27th day of April, A. D. 1886.

[SEAL.] D. W. FESSENDEN, *Clerk.*

It also appeared that on the twenty-ninth of July, 1885, said court of commissioners made the following order: "Ordered, that the clerk of the court is hereby authorized to substitute the name of any attorney of this court in place of said Jerome F. Manning in any case upon the receipt of the request in writing from the claimant therein or from his legal representatives to that effect."

27 It also appeared that the defendant French was commissioned and qualified as a judge of said court of commissioners on or about July 5, 1882, and not otherwise, and that the defendant Harlan was commissioned and qualified about the same time, and not otherwise, and that the defendant Draper was commissioned and qualified in the year 1885, and not otherwise, and

that each of said judges concurred in said orders of July 24, July 25, July 29, and October 15, 1885, touching the plaintiff.

It also appeared that in addressing the court on July 25, as mentioned in the foregoing record, Robert Christy, Esq., as counsel for the plaintiff, read to said court of commissioners section 725 of the Revised Statutes of the United States and the decisions of the Supreme Court of the United States in the cases of *Ex parte* Robinson, in 19 Wallace, 505, and *Ex parte* Bradley, in 7 Wallace, 364, and argued that said commissioners had no power to prohibit the plaintiff from practising before them.

The defendant French admitted that he concurred with the other members of said court of commissioners in issuing and enforcing said orders of July 24 and 29, and that the plaintiff was thereby damaged, and claimed that the said court of commissioners had authority to issue and enforce the same, and that any loss sustained by the plaintiff thereby was *damnum absque injuria.*

The plaintiff introduced evidence tending to show that each of the allegations in his declaration was true, and asked the court to make the following rulings:

First. That the court of commissioners of Alabama claims had no authority to make the order made by them touching the plaintiff on July 29, 1885, and that the same was unlawful.

Second. That the defendant French having admitted that he concurred with the other defendants in issuing and enforcing said order of July 29, 1885, and that the plaintiff was thereby in-
28 jured, the plaintiff is entitled to recover from said French compensation for all losses sustained by him as the direct result of said order of July 29, 1885, and of the enforcement thereof from thence to December 31, 1885.

Third. That more than two years having elapsed after the reorganization of the court of commissioners of Alabama claims, under the act of June 5, 1882, and after the appointment of the defendant French and the other defendants, but prior to July 24, 1885, the said French and the other defendants had, on said last-mentioned day and thereafter, no lawful authority to act as judges of said court of commissioners of Alabama claims.

But the court declined so to rule, found the facts to be as stated in said printed record, ruled that the action could not be maintained, and found for the defendants.

The plaintiff, being aggrieved by the foregoing rulings and refusals to rule, excepts thereto, and prays that his exceptions may be allowed.

JEROME F. MANNING,
By CHARLES COWLEY,
His Attorney.

Filed May 31, 1888.

Exceptions allowed.

CALEB BLODGETT, *J. S. C.*

29 And on the 21st day of June, A. D. 1889, a rescript from the supreme judicial court of the Commonwealth was filed in the case in words following, to wit:

"*Exceptions Overruled.*"

It is, therefore, on this 1st day of July, A. D. 1889, considered by the court that the said Asa French recover against the said Jerome F. Manning his costs of said suit, taxed at fifty-two dollars and twenty-seven cents.

All which premises we have held good, by the tenor of these presents to be exemplified.

In testimony whereof we have caused the seal of our said superior court to be hereunto affixed.

Seal of the Superior Court.

Witness Lincoln F. Brigham, Esquire, chief justice of our said superior court, at Cambridge, this 1st day of July, in the year of our Lord one thousand eight hundred and eighty-nine.

THEO. C. HURD, *Clerk.*

30 The United States of America to Asa French, of Braintree, in the county of Norfolk and Commonwealth of Massachusetts, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of October next, pursuant to a writ of error filed in the clerk's office of the superior court of the Commonwealth of Massachusetts, wherein Jerome F. Manning is plaintiff in error and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness Lincoln F. Brigham, chief justice of the superior court of the Commonwealth of Massachusetts, this sixth day of July, in the year of our Lord one thousand eight hundred and eighty-nine.

LINCOLN F. BRIGHAM,
Chief Justice of the Superior Court.

31 [Endorsed:] Jerome F. Manning, plaintiff in error, *v.* Asa French, def't in error. Citation to defendant French.

BOSTON, *July 17th*, 1889.

I accept service of within citation.

ASA FRENCH,
By his att'y, CHAS. THOS. RUSSELL, JR.

Endorsed on cover: Massachusetts superior court. No. 1188. Jerome F. Manning, plaintiff in error, *vs.* Asa French. Filed August 7, 1889.

Supreme Court of the United States,

OCTOBER TERM, 1889.

No. 1188.

JEROME F. MANNING, Plaintiff in Error,

vs.

ASA FRENCH, Defendant in Error.

Brief for and by the Plaintiff in Error

UPON THE MOTION OF THE DEFENDANT IN ERROR TO DISMISS THE WRIT IN ERROR AND TO AFFIRM THE JUDGMENT.

CHARLES COWLEY, ESQ.,

Counsel for Plaintiff in Error.

January 11, 1890.

PREFACE.

OBJECTIONS OF PLAINTIFF IN ERROR TO ANY ARGUMENT UPON, OR CONSIDERATION OF; THE MOTION OF THE DEFENDANT IN ERROR TO "AFFIRM THE JUDGMENT."

The objection to any action upon the "motion to affirm the judgment" at this time is based chiefly upon the fact that to do so involves, necessarily, a consideration of the merits of the original cause: as between the plaintiff and the defendant.

"To warrant the Supreme Court of the United States in entertaining a motion to affirm, there must be color for the motion to dismiss." Metcalfe *vs.* The Alaska, 130 U. S. 201. L. Ed. Book 42, p. 923.

"Where the question raised in this Court is a 'Federal Question,' it will not sustain the motion to dismiss; but if there is color for the motion, and the contention has often been determined adversely, so that the rule must be regarded as settled, a motion to affirm will be granted." Walston *vs.* Nevin, 128 U. S. 578; L. Ed. Book 32, p. 544.

The defendant in error fails to show (as coming within the rule of this latter case) that plaintiff's contention has "often been determined adversely, so that the rule must be regarded as settled."

"This Court has jurisdiction when the record shows that a 'Federal Question' was raised and decided adversely to the plaintiff in error."

Richards *vs.* Mackall, 113 U. S. 539; L. Ed. Book 28, p. 1132.
Whitney *vs.* Cook, 99 U. S. 607.
Kansas Endowment and Benefit Ass'n *vs.* Kansas, 120 U. S. 10; L. Ed. Book 30, p. 593.
Church *vs.* Kelsey, 121 U. S. 282; L. Ed. Book 30, p. 960.
Clark *vs.* Penn., 128 U. S. 395; L. Ed. Book 32, p. 487.
Bridge Proprietors *vs.* Hoboken L. & I. Co., 1 Wall. 116; L. Ed. Book 17, p. 571.
McGuire *vs.* Mass., 3 Wall. 380; L. Ed. Book 17, p. 571.

This unbroken current of authorities settles this phase of the proposition beyond question; and that a "Federal Question" was raised by the plaintiff, and "decided adversely" to him, appears so obvious from the Record, that argument would be superfluous; and an attempt "To gild refined gold, and to paint the lily."

See Lynch *vs.* DeBernal, U. S. Reports, Vol. 131, No. 303, Dec. term, 1868, decided Nov. 5, 1869, error to Supreme Court of the State of California.

"A motion to dismiss for want of jurisdiction was denied, because it involved looking into the merits."

Chief Justice Chase said: "The question of jurisdiction in this case cannot be determined without opening the record, and looking into the merits of the controversy. The motion to dismiss for want of jurisdiction will, therefore, be denied, but may be argued upon the hearing of the cause."

9 Wall. 315.

"Want of jurisdiction, and irregularity of the writ, are the only grounds for dismissal."

Foster *vs.* Kansas, 112 U. S. 205.
Crane Iron Co. *vs.* Hoogland, 108 U. S. 5; L. Ed. Book 27, p. 630.
Hacker *vs.* Fowler, 1 Black 95; L. Ed. Book 17, p. 45.
Sparrow *vs.* Strong, 3 Wall. 97; L. Ed. Book 18, p. 49.
See, especially, Canter *vs.* American Ins. Co., 2 Peters 54; L. Ed. Book 7, p. 517.
Jacks *vs.* City of Helena, 115 U. S. 228; L. Ed. Book 29, p. 392.

The Brief of the counsel for the defendant in error is almost entirely made up of a discussion of the merits of the case. He thereby admits that, to consider his motion to dismiss; it becomes necessary to consider the merits.

The defendant, having taken this position; thereby concedes that this case comes within the inflexible rule (as above stated) that "motion to dismiss for want of jurisdiction denied, because it involves looking into the merits; and in another form of language the question of jurisdiction cannot be determined without opening the record, and looking into the merits of the controversy."

The defendant, French, by his counsel, has himself "opened the record" and "looked into the controversy" most exhaustively. Having thus "opened" and "looked into," the consequences of "opening" and "looking into" must be by him borne, to wit: the denial of his motion to dismiss, and, as a consequence, *per se*, a denial of the motion to affirm, too.

The plaintiff in error would go no further; except upon the maxim, "*ex majori cautela;*" but, out of superabundant caution, will discuss (in a responsive way) the merits of the case to meet the discussion of the merits by the defendant.

The plaintiff reasserts his belief and position; that this Court, at *this* time (on this joint motion to dismiss and affirm), cannot consider the merits (and further protests against their consideration at this time), and has only considered them (in part) in his Brief, in the altogether (to him) improbable event of the consideration of the merits; now, by this Court.

Therefore; the plaintiff in error submits a short and incomplete Brief upon the merits; that his error, if any, may be on the side of safety and caution.

The defendant in error says there is no "Federal Question;" but, in endeavoring to determine whether there is, or not, a "Federal Question," he, himself, discusses, with great prolixity and minuteness; the merits of the controversy.

The defendant's Brief occupies 28 pages. Exclusively, from and after page 9, the discussion is upon the merits; and the greater portion of the Brief, reckoning backward from page 10 to the beginning, is also devoted to the question of the merits. Substantially, everything from page 4 to page 10 is devoted to discussing the merits.

The defendant should have confined his discussion to that part of the "motion to dismiss for want of jurisdiction;" to enable him to bring his case within the limits of the rule.

Upon page 11 of defendant's Brief is cited Lange *vs.* Benedict, 99 U. S. 68; L. Ed. Book 25, p. 470.

Viewed hastily and with superficial glance; this case might seem to sustain the defendant's contention (on the merits) that the defendant was not liable in damages; but close inspection, and the history of the facts, shows that it, unqualifiedly, sustains the position of the plaintiff; as to the liability of the defendant.

This action was against a judge of the U. S. District Court holding the circuit for the Southern District of New York. The case was before the Court at different times, in different forms. In its first form, it was found in 18 Wall., 85 U. S. 163; L. Ed. Book 21, p. 72. It involves, essentially, the question of jurisdiction. Toward the close of the opinion, the Court says: "The judgment first rendered, though erroneous, was not absolutely void. It was rendered by a Court which had jurisdiction of the party, and of the offence; on a valid verdict. The error of the Court in imposing the two punishments mentioned in the statute (when it had only the alternative of one of them), did not make the judgment wholly void." This was where the judgment defendant petitioned for a *habeas corpus* and a writ of certiorari in 1875. In 1879, 9 Otto, 99 U. S.: L. Ed. Book 25, p. 469 (where Lange had sued Benedict in damages), the Court held (referring to the previous case in 18 Wall., 163): "The defendant in error is not liable in damages for the false imprisonment; because in pronouncing the judgement under which the imprisonment was had; he acted as a judge, in his judicial capacity, and not so entirely in excess of his jurisdiction as to make it the arbitrary and unlawful act of a private person. This is not a 'Federal Question,' and it was the only question decided."

Observe the distinction; broad and fundamental. In the Lange and Benedict case it was found,

1st. That the judge had jurisdiction of the party and of the offence, and that the verdict was valid.

2d. That by reason of this jurisdiction, and the defendant being judge of a court having power to both fine and imprison, or either; he was not liable in damages.

But that case is not the case at bar. The distinctions are without limit, and the differences immeasurable. In the citation, there was an indictment by the Grand Jury; there was a trial before a Traverse Jury, and a valid verdict on the facts; and two sentences. The first sentence was valid; the second, invalid; because the first had been imposed and served by the payment of a fine; and the second was invalid, because the Court had only the alternative power either to fine or imprison.

But this New York Court had both. Manifestly, this was not a case of want of jurisdiction; but one in excess of jurisdiction. In the suit for damages the Court impliedly and indirectly establishes the doctrine (held in

Massachusetts and elsewhere) that the judge of an inferior tribunal, like a justice of the peace; can be held liable in damages, not merely for want of jurisdiction, but for any act in excess of jurisdiction.

But in the case at Bar there was no jurisdiction at all; not the slightest; none whatsoever; there was no shadow of jurisdiction, or glimmer of authority, either over the plaintiff in person (by a void "Order to Show Cause"), or over the offence; because no offence had been committed. The act charged against the plaintiff by the Commissioners (even if true, and it is unqualifiedly false) was no offence; for two reasons:

1st. The act establishing and re-establishing the Court of Commissioners prescribed no offences.

2d. Because this Commission (or Board of Audit, of Alabama Claims), had not a scintilla (even by the pretension of counsel) of common law jurisdiction.

It is both ridiculous and absurd to claim that this tribunal had any common law power. Manifestly, then; if there was no offence prescribed in the act, and none committed at common law, the "Order to Show Cause" (based on a pretended act) was clearly void. It was not merely erroneous or voidable, but teetotally void, *ab initio*.

If the plaintiff did the act charged in the "Order to Show Cause:" then Commissioner Draper (the party threatened with "hostile proceedings") should have complained to a justice of the peace, or the Police Court of the District of Columbia, and tried the matter there; if a warrant had been issued for the plaintiff.

On page 10 of defendant's Brief is a quotation from Waite, C. J.; but this quotation (if true, and the plaintiff cannot ascertain whether it is true, or not; because the volume and page are not given) in nowise touches the case at bar; because the citation, itself, clearly shows that no claim or question of a "Federal character" was set up in the Trial Court, or pretended to be set up; it was omitted entirely, as in Spies *vs.* Ill., 123 U. S. 131, 181.

In this (the "Anarchist Case") the very idea, itself: of coming to the U. S. Supreme Court was a new-born, after-thought; when all the remedies of the State Court had been exhausted, and that without even broaching a "Federal Question" to the Trial Court.

The same is substantially true of the remaining citations, on page 10 of defendant's Brief.

Sec. 709, R. S. U. S., is the source of authority in the following language: "Or where any title, right, privilege, or immunity is claimed under the constitution, or any treaty or statute, of, or commission held, or authority exercised under, the United States, and the decision is against the title, right, privilege, or immunity specially set up, or claimed, by EITHER party, under such constitution, treaty, statute, commission, or authority (i. e. the judgment) may be re-examined and reversed or affirmed in the Supreme Court upon a writ of error."

Further, "The Supreme Court may re-affirm, reverse, modify, or affirm the judgment or decree of such state court, and may, at their discretion, award execution, or remand the same to the court from which it was removed by the writ."

Whatsoever the claim may be; can be made by "*either party.*"

The defendant contends that it must be set up or claimed only by the defendant.

To assert a right, it is not necessary to use the word "right." To use the word "right" simply; without stating facts to show of what the right consisted, would be of no avail, and utterly nugatory. The plaintiff (though not using, perhaps, the word "right" in his pleadings) asserts facts to show that he claims not only "rights," but "privileges" and "immunities." If these, or either of these, are simply "claimed" by the plaintiff; then this Court has jurisdiction. Plaintiff claimed the right to act as agent, or, if need be, as an attorney and counsellor at law, as one claim; and the other was the claim of "immunity," or freedom from the arbitrary interference with such rights, by the "Order" complained of.

Sec. 709 uses the word "*Commission;*" being exactly apt to this case. The plaintiff claimed to exercise these rights under the "Commission of Alabama Claims," and the "immunity" from non-interference in their exercise; and the decision was against these, and each of these claims, of the plaintiff. Therefore, this Court has jurisdiction.

He also claims rights (fundamental in their character) under the constitution. In Bridge Proprietors *vs.* Hoboken Co., 1 Wall. 116, and other cases cited, pp. 180 and 181 in Notes on R. S. U. S., it says: "It is sufficient if the record shows a case necessarily within the Constitution, and the particular clause relied on need not be expressly set forth."

Page 181, *Idem.* "The Supreme Court can review decisions against rights claimed under the Act of Congress."

Idem.: "Decisions of state courts denying a right, title, etc, claimed under an act of the Federal Court may be reviewed by the Supreme Court."

This Court has jurisdiction "when a decision of a Federal question is necessary to any final judgment in the case."

Murdock *vs.* Memphis, 20 Wall. 636.

Same opinion: "The Federal question must have been decided against the right claimed by the plaintiff in error."

Also, Burke *vs.* Gaines, 19 How. 388.
Smith *vs.* Adsitt, 16 Wall. 185.

"And this may be done by evading a direct decision on a necessary point." State Court evaded one point.

Chapman *vs.* Goodnow, 124 U. S. 548. The State Court omitted entirely to decide the question of whether the causes alleged in the record were sufficient to authorize and warrant the decree of removal.

See, also, Notes on R. S. U. S., top of page 178; also, pp. 176, 177.

"The Federal question need not have been formally raised; but it is sufficient if it appears by clear and necessary intendment that a Federal question was raised and presented to the State Court."

Crowell *vs.* Randall, 10 Peters, 368.
And other cases pp. 176, 177. Notes on R. S. U. S.

"Whether or not the defendant's conduct was in fraud of an act of Congress will not be re-examined by the Supreme Court at *his* instance;" that is, at the instance of this defendant.

Udell *vs.* Davidson, 7 How. 769.
Walworth *vs.* Kneeland, 15 Id. 348.

The interior thought and purpose of the defendant's motion to dismiss and affirm (such motions being submitted only on printed briefs, without oral argument) is an indirect attempt to shut off the plaintiff from his clear constitutional right of oral argument to the Court; if he desires to exercise that right of oral argument.

If this motion is to be allowed; then the up-shot is, that any defendant in error can shut the mouth of his antagonist; by compelling him to submit a cause on the merits by printed briefs only. This would deprive plaintiff of invaluable rights, and also the Court of what is commonly understood to be a valuable aid to judicial tribunals.

Upon the top of page 11 of defendant's Brief is a grossly incorrect statement of plaintiff's claims; so much so, as to become glaring.

This Court, therefore, is referred to the Pleadings in the cause, to be themselves examined.

The entire drift, gist, and the very marrow of the Plaintiff's Declaration in the Trial Court in Massachusetts was to show, substantially; that he had rights, both individual, and as an attorney and counsellor at law, which the defendant (jointly with his Co. Commissioners) had unqualifiedly violated and interfered with; and, as far as possible, with his property rights; and had utterly annihilated them.

To say, then, that plaintiff claimed no rights (when all the rights asserted therein were rights, under acts of Congress) is; to say the least, an unqualified distortion and perversion of the facts contained in the Record.

In Dent *vs.* West Virginia, p. 121, Vol. 129, U. S. Reps., the Court says:

"It is undoubtedly the right of every citizen of the United States to follow any lawful calling, business, or profession he may choose, subject only to such restrictions as are imposed on all persons of like age, sex and condition."

"This right may in many respects be considered as a distinguishing feature of our Republican Institutions. Here all vocations are open to every one on like conditions. All may be pursued as sources of livelihood, some requiring years of study and great learning for their successful prosecution."

"The interest or, as it is sometimes termed, the Estate acquired in them; that is the right to continue their prosecution, is often of great value to their possessors, and cannot be arbitrarily taken from them, any more than their real and personal property can be taken from them."

Applying the rule here laid down to the case at Bar, it stands thus: The plaintiff was engaged in a lawful calling as an attorney and counsellor at law: in a line of avocation where special and exceptional knowledge was required for success: was following, in familiar phrase, a "specialty." The pretended order was an "arbitrary deprivation" of the right to follow that calling, and use his "estate in its prosecution." It was summarily taken away, on terms and conditions totally at variance with that of any other person or attorney similarly situate; and without cause, or without authority: the order was an exercise by force of an arbitrary power, temporarily and maliciously used for the sole and exclusive purpose of destroying the plaintiff's "estate" in the "prosecution" of the "business." It is impossible to conceive a more malicious exercise of arbitrary and ill used power under circumstances conclusively showing and proving "malice," and that of a most malignant type. Peck Adm'x. *vs.* The U. S. Lawyers Coop. Ed. U. S. Reps. Book 26, page 46, last part of opinion, which latter part is omitted in Otto's Ed. This case is decisive against the use of "force," by illegal orders of Courts, in substituting one attorney for another, without attorney's consent.

"Due process of law," defined.

Dent *vs.* West Va., Vol. 129 U. S. Reps. February, 1889, Part I., page 123. The Court says: "This phrase comes to us from England, and was there designed to secure the subject against the arbitrary action of the Crown and place him under the protection of the law." They were deemed to be equivalent to "the law of the land." "In this country the requirement is intended to have a similar effect against legislative power; that is to secure the citizen against any arbitrary deprivation of his rights, whether relating to his life, his liberty, or his property. The great purpose of the requirement is to exclude everything that is arbitrary and capricious in affecting the rights of the citizen."

118 U. S. 356, 369.
Pennoyer *vs.* Peff, 95 U. S. 711, 733.
Davidson *vs.* New Orleans, 96 U. S. 97, 104, 107.
Hartado *vs.* California, 110 U. S. 516.
Missouri Pacific R. R. Co. *vs.* Hames, 115 U. S. 512, 519.
Head *vs.* Amoskeag M'f'g Co., 113 U. S. 9.
Leading case. Opinion by Gray, J.

If the acts establishing and re-establishing the Commission gave to it the authority contended for by the defendant, and held by the Court in Massachusetts; then the act in respect to this authority is unconstitutional and void; in this: "No person shall be deprived of life, liberty or property without due process of law."

Neither the "Order to Show Cause," or the "Order of Removal" following that, were "due process of law." The "Order" and the "Decree"

both directly affected the rights of property of the plaintiff; the right to labor, and the right to be employed, and the earnings of that labor and employment; and also another right of property, to wit: The fees in these claims being contingent, and the plaintiff having paid in all cases most of the expenses, and, in some of them, all the expenses: these were included and represented by the United States Treasury drafts issued in payment of the judgments (obtained by the plaintiff as attorney): also, in part, made up by these investments of the plaintiff, of which the "Decree" ultimately deprived the plaintiff. Obviously, if such deprivation could be constitutional and lawful: it could only be so after a Jury Trial. An "Order" by a temporary Commission, upon a matter manifestly outside its jurisdiction; cannot, under the organic law, deprive a citizen of the United States of an invested right of property. That the plaintiff was deprived of a right of property, follows, *ex necessitate*, upon the "Order" and its enforcement: and it is also admitted by the defendant.

REPLY TO DEFENDANT'S BRIEF.

The alleged "Statement of the Case" by defendant on p. 2 is both defective and misleading. The plaintiff refers the Court to the Record.

The plaintiff offered to prove that the alleged facts in the Record were false; but the Court held that the Record could not be contradicted, and was itself conclusive, on the ground that it was a Record; as if it was a Record of a Court of Record.

This ruling clearly was erroneous; as this Court has twice held in Great Western Ins. Co. *vs* U. S. 112, U. S. Reps. that it was not a Court of Record; but only a "Commission."

It was a tribunal of "special and limited jurisdiction."

In Cunningham *vs.* Bucklin, 18 American Decisions, p. 436, the Supreme Court of New York said: "He is a Commissioner not clothed with any general judicial authority; not vested with power to fine and imprison; but specially authorized to do certain acts under certain circumstances. Within his jurisdiction he acts judicially."

This is like the case at Bar, because the Commission was authorized to hear and determine "Alabama Claims;" and nothing else. It had no authority, either in express terms, or impliedly, to deal with the plaintiff, either as an agent, or as an attorney, at all.

A Record of an inferior court, or tribunal, is only conclusive as to matters clearly within its jurisdiction.

Harrington *vs.* People, 6 Barbour, 611.

In 12 N. Y. 579, it was held that the discharge of an insolvent debtor by a Commissioner, under the act, was not evidence of jurisdictional facts stated therein: and Judge Denio was of opinion that the question in Cunningham *vs* Bucklin was really one of jurisdiction; saying: "The Court erred in supposing that taking up the case after it had been discontinued did not raise the question of jurisdiction." So this Record (as to the acts therein charged) was not conclusive evidence of the alleged facts therein stated.

The plaintiff's offer to contradict the Record should have been allowed. It was an error (reviewable here) to be corrected.

Also, this Court has the power to determine whether the Record (if true and conclusive) was adequate and sufficient for the Decree. This Court has the power to decide, "*de novo*," the question, "whether, if the Record was true, the Court had the power to make the 'Order,' that the power was lawfully exercised; and whether the punishment or consequences (contained in the 'Decree') was a legal *sequitur* of the acts charged, or not?" If

not, this Court has the power to reverse that finding; called a "Decree."

The "right" claimed by the plaintiff was the "right" to labor for others; to exercise the franchise or privilege of his profession as an attorney and counsellor at law. If the pretended "Bar" of the Commission was legal; then was the plaintiff lawfully and justly ousted therefrom, or not? If the pretended "Bar" was illegal, was the plaintiff lawfully prohibited from exercising his employment as agent of his constituents, or not? These are fundamental and essential questions.

There was no actual or legal necessity requiring claimants to employ (as their agents) attorneys and counsellors at law. *That* was a matter of policy or expediency; to be exclusively decided by the claimants themselves. It is fundamental law, and natural justice; protected and guaranteed by the Constitution and Laws of the United States; that all persons having business to be done with the Government of the United States, or with its agents (whether Commissioners, or heads of departments, is immaterial), may employ whom they choose, or do it themselves.

This "right," "privilege," or "immunity" was claimed by the plaintiff, under the Acts of Congress establishing and re-establishing the Commission. No right was claimed under any law of the Commonwealth of Massachusetts.

Suit was necessarily brought in the State Court (in the first instance), because both plaintiff and defendant were citizens of the same State.

The Massachusetts Court held that the Court of Alabama Claims was not one of the "inferior courts" of the United States, as contemplated in Sec. 1, Art. 3 of the Constitution. If not such a tribunal as is there provided for; then it logically and legally results that it was but a Commission; and a Commission in the ordinary sense of that descriptive word. Being such; the *onus probandi* is on the defendant (by an inflexible and invariable rule of law) to show that it had the jurisdiction, the power and authority to make the "Order" of July 24, 1885, and the "Decree" of July 29, 1885.

There are two certain tests as to whether a tribunal is one of general, or common law, jurisdiction, or not; to wit:

1st. Has it the power to enforce its own judgments?

2d. Has it the power to fine or imprison?

Clearly, this Commission could not enforce its own judgments; the law simply gave it the power to certify those judgments to the Secretary of State. Beyond this, it had no power whatever. Clearly, it had no power to fine, or imprison; because it was not charged with the jurisdiction of any offences. Conclusively, then, it was neither a tribunal of common law, or general, jurisdiction. What was it? A Commission exclusively; limited in power; limited in tenure; limited in duration.

Manifestly, then, these "Orders" were unauthorized; and, being unauthorized, their authors can be mulcted in damages therefor.

Again: the Record, itself, must recite and contain facts showing the jurisdiction. The proof of the jurisdiction cannot be shown, except as it is self-contained in the Record. The Record fails to show any such authority; and it cannot be supplied, either by intendment, or by witnesses to prove it in any other form.

Cooley on Torts, 2d Ed., pp. 480-486, *et seq.*, and 490-496.

Again: The "Order" was void, because retroactive and retrospective. It resulted, and was intended to result (by the accompanying "Order" of permission to substitute other counsel for the clients of the plaintiff in place of the plaintiff), in striking from the Docket of said Commission the Record of the entries of the agency of the plaintiff in the capacity of an attorney and counsellor at law for his clients.

This Record of Entries was made by the clerk (and he an independent officer, appointed by the President and confirmed by the Senate), and was, in law, sacred and inviolable. Yet it was mutilated in this way by express "Order" of these Commissioners; and this mutilation was an indictable offence.

Quare: Can officers of the United States (guilty of indictable offences) shield themselves from damages by pleading in a civil action; an indictable offence? Obviously not. Yet, exactly and legally stated; this is the position of the defendant, voluntarily assumed.

In an illogical, illegal and unjustifiable attempt at defence, what is called a "Rule of the Court" is plead. What an incongruous absurdity for a *Commission* to plead (in defence to an action) one of its own, self-styled "Rules of the *Court;*" when the law, itself, creating the Commission; and two decisions of this Court; and the decisions of other Courts; show that it is not, in any legal sense, "a *court;*" but is only (as the Supreme Judicial Court of Massachusetts has decided in the case of Manning *vs.* Sprague. 148 Mass. 18) a "mere inquest," or equivalent, in its *power*, to a Committee of Congress.

In support of the same doctrine, substantially, see Decisions of the same Court in

Heard *vs.* Sturgis, 146 Mass. p. 545.
Stirling & Ahrens *vs* Brooks, Assignee, Maryland Court of Appeals, Vol. 1888.
Supreme Court in Gen'l Term, 1st Judicial Dep't. N. Y. City. 1889.
Supreme Court of Maine in Kingsbury *vs.* Mattocks, April, 1889.

This "Order" and "Decree" was as arbitrary in its character and purpose; as a ukase of the Czar of Russia; or an edict of the Sultan!! Such things are not permissible, with impunity; in a land regulated by an organic law; sacred and inviolate in its protection of rights; both of person and property.

It is a maxim that if Rules of Court (even when lawfully made) conflict with the Constitution or the laws of the land; *such* rules are void.

31 Cala. 101.
84 N. Y. 284.
11 Gratt. (Va.) 60.
37 La. Ann. 596.
Penn. State Reports, 531.
5 Iowa, 468.

Clause 5 of Rule 6 of this Court says: "Or if the question on which the jurisdiction depends is so frivolous as not to need further argument."

Under this clause, has the defendant in error any right to join a motion

not, this Court has the power to reverse that finding; called a "Decree."

The "right" claimed by the plaintiff was the "right" to labor for others; to exercise the franchise or privilege of his profession as an attorney and counsellor at law. If the pretended "Bar" of the Commission was legal; then was the plaintiff lawfully and justly ousted therefrom, or not? If the pretended "Bar" was illegal, was the plaintiff lawfully prohibited from exercising his employment as agent of his constituents, or not? These are fundamental and essential questions.

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Clause 5 of Rule 6 of this Court says: "Or if the question on which the jurisdiction depends is so frivolous as not to need further argument."

Under this clause, has the defendant in error any right to join a motion

to affirm with a motion to dismiss? This narrows the ground-work of the motion to this exact point; "The question on which the jurisdiction depends;" but at least nine-tenths of the defendant's Brief runs into the merits, and is not "a discussion" of the "question on which the jurisdiction depends." The defendant must confine his argument to this very narrow and straight-laced limitation. The defendant must show that THIS question is so "frivolous as not to need further argument."

But his motion (p. 1 of Record) sets out other grounds, and uses the word, "trivial." "Trivial" is a derivative of the Latin "*trivium*;" its roots "tres" and "viæ," "three ways;" that is, the casual talk of an accidental meeting at the fork of the roads.

THIS idea must be *excluded* from plaintiff's motion.

"Frivolous" means "worthless;" "foolish." That is; the defendant means to say; that an action of the gravest character, involving, in good faith, an *ad damnum* of $200,000 (and the defendant, himself, *admits* the damage), is, as he contends; a "frivolous" matter! It calls to mind the lines from Robertson: "The Admiral was no stranger to the *frivolity;* as well as the *falsehood*, of what he urged in his defence."

If as charged, the plaintiff used "unseemly threats," he is punishable under Sec. 5399, R. S. U. S., Vol. 24 Fed. Rep. 731; illustrating the maxim, "*Expressio* unius, exclusio alterius:" and liable by *no other provision of law.*

Sec. 5399 R. S. U. S. is as follows: "Every person who corruptly, or by threats or force, endeavors to influence, intimidate, or impede any witness, or officer in any court of the United States, in the discharge of his duty, or corruptly, or by threats or force, obstructs or impedes, or endeavors to obstruct or impede, the due administration of justice therein, shall be punished by a fine of not more than five hundred dollars, or by imprisonment not more than three months, or both."

Defendant claims that he was an officer of a "court of the United States;" and the "Order to Show Cause" says: "for the purpose of preventing the occurrence of like attempted intimidations in the future on the part of said Manning, and preserving the freedom of the Court in the discharge of its official duties, etc." If this Commission was a "Court of the United States," and the defendant an officer thereof, and *if* the plaintiff had been guilty of "intimidations;" then, manifestly, he was punishable under this section. If punishable under that, the second punishment could not constitutionally be inflicted for the same offence.

The gist of this controversy of words, orders and decrees (absolutely choked with superfluous, inapt verbiage) is contained in this proposition, to wit: If the Court was in session (its sessions being public), then the plaintiff and his client, Berthoud, had the right to enter, and could not have been guilty of force in making an entry; if not in session, then it was no court; and the charge is not that the plaintiff threatened hostile proceedings against the Court (even if only in official consultation); but against one member thereof, Commissioner Andrew Jackson Draper.

Their own Record has dug for them a bottomless pitfall. It is incongruous, inconsistent, self-contradictory, nugatory, and, in law, utterly abortive. The Commissioners gyrated in intellectual contortions of language, consequent upon some nebulous and imaginary insult;—a conspicuous and unparalleled piece of *quasi* judicial misconduct.

But the "Decree," in this respect, touching the plaintiff, is utterly defective; in this; that it deals exclusively, in the most general of generalities; and nowhere does it contain the slightest specification. Within it, there is not a scintilla of legal evidence (as to the material facts pretended) against the defendant. A complaint or indictment of such conspicuous indefiniteness would be laughed out of any respectable court accustomed to, and governed by, the precision and certainty of the law.

The defendant talks glibly about "Discretion." Lord Coke described discretion as "a crooked cord." Discretion is neither license, whim, prejudice or caprice; but it is a sound, honest and discriminating judgment, regulated by well-established principles of the law.

The question of authority, or power (these terms being used interchangeably and convertibly), is, "Had this Commission the jurisdiction of the person of the plaintiff; and also the jurisdiction of the subject-matter?" It had jurisdiction of the person; always *provided* it had authority to *issue* the "Order to Show Cause (p. 9 Record); and the power to cause the same to be served upon the plaintiff. It had no power to issue the "Order;" because the act (under which it sat) was silent upon the subject of giving the Commission authority to determine who should present petitions or causes to the Commission. Such power is not given; either in express terms, or impliedly. Consequently, the Commission is without such power.

The "Order to Show Cause" recites: "Jerome F. Manning, an enrolled attorney and counsellor at law on the records of this Court," * * * and; "show cause, if any there be, why his name shall not be stricken from the rolls of attorneys and counsellors at law authorized to practice before this court." These statements show a clear and unqualified assumption of power; that the Commission determined the person or persons, that could present petitions, and try them on their merits; in other words, the unqualified usurpation of an undelegated and pretended power to discriminate and say that one person, or a certain set of persons, could exercise before it the functions of an agent; but that another person, or another set of persons, should not exercise such functions. If such power exists by assumption, or imaginary implication, in a tribunal of this character, limited in jurisdiction, and in tenure: then the door is wide open for favoritism, oppression, nepotism, and all the accursed things attendant upon the train of kingly power, that were utterly and absolutely wiped out by Magna Charta in England, and the Constitution in America. This principle, once recognized and established in our tribunals inevitably leads, ultimately, to a complete annihilation of the dearest personal and property rights existing in a free people.

2d. Had it jurisdiction of the subject-matter? that is, the abstract thing; the general subject-matter constituting the issue, as shown in the "Order to Show Cause," between the Commission and the plaintiff?

This question of jurisdiction cannot be determined by the alleged or pretended facts (if true), contained in the "Order to Show Cause." It can only be lawfully decided by the general, great and abstract truth underlying the very character, objects, purpose and qualifications of the Commission and its Commissioners. That subject-matter was exclusively "Alabama Claims;" it was nothing else; it was this; no less, and no more.

Quære: Can a jurisdiction to determine the "amount" and "validity"

(see Sec. 11 of the Act of 1874) of "Alabama Claims" give, by implication (that is, the implication of law; not of imagination), the power to deny to the plaintiff the right to continue to represent before the Commission the claimants to the fund; which he had represented for several years? Plainly and emphatically not. The clients, or claimants, themselves, made no objection; rather, they protested against this wanton, arbitrary and oppressive "Order" as injurious alike to them, and to the plaintiff.

If, *de facto* and *de jure*, the Commission had had a "Bar:" then, by an inflexible rule regulating the legal relations and defining the mutual obligations of Court and "Bar," there was no power to "disbar," or suspend from practice — except by reason of *dishonest* dealings in strictly professional or official transactions; dealings between the client and the court in some matter, or matters, *pendente lite*. Upon this ground, and this only, does any court get the power to disbar, or suspend one of its officers.

The plaintiff hereby challenges the defendant to show a single recorded instance of suspension or disbarment where the element of moral unfitness does not enter: almost invariably the element of dishonest dealings between counsel and client, touching matters *pendente lite*. No such pretension of dishonesty, or moral disqualification, is intimated in the "Order to Show Cause."

Therefore, *arguendo* conceding that this Commission had, in a legal sense, a "Bar;" and, consequently, the power to suspend, or disbar; manifestly, no cause existed that could set into operation, (either on plaintiff or client) *ex mero motu:* such a destructive power.

The "Decree," p. 11 of the Record, recites: "The rule to show cause in this matter was issued by the court upon its own motion."

Again was the act invalid; by the Record, itself, on p. 11, in this:

1st. That there was no court, because it was not in session.

2d. It was not in the court-room; but a room adjoining.

3d. It was on July 23, 1884 (in the afternoon), when, by order of the President, the Commissioners had been prohibited, by official proclamation, from engaging in the transaction of official business; (of which) this Court will take judicial notice.

Beaurain *vs.* Sir Wm. Scott, 3 Camp'b. 388.

In this case "a person in the office of judge of the ecclesiastical court in England excommunicated one for refusing to obey an order made by him that he become guardian *ad litem* for an infant son, and though the order was made in a matter then lawfully before the court for adjudication, and of which he, as judge, had jurisdiction he was held liable to an action."

"It is plain that the fact that a man sits in the seat of justice, though having a clear right to sit there, will not protect him in every act which he may choose or chance to do there."

Vol. 73, N. Y. 26, Court of Appeals, 1878, Folger, C. J.

Id. "Where there is no jurisdiction at all, there is no judge. The proceeding is an nothing."

Perkin *vs.* Proctor, 2 Wilson, 384, 384, citing the Marshalsea Case, 10 Coke, 65, 76, which says: "Where there is no jurisdiction, *non est judex.*"

See, also, Groenvelt *vs.* Burwell (1 Ld. Raym. 454) quoted with comment on bottom p. 27, 73 N. Y.

The test of jurisdiction of the subject-matter is this: "The power to inquire and adjudge whether the facts of each particular case make that case a part or an instance of that general thing:—that power is jurisdiction of the subject-matter."

See Hammond *vs.* Howell, Recorder of London, 2 Mod. 218.
Burrell's Case, Vaughan's Reps. 135.
Hunt *vs.* Hunt, 72 N. Y. 217.

The question, then, is, "Whether this Claims Commission, in consultation in a room other than the court-room, at a time when the executive head of the government had prohibited them to sit, had jurisdiction to make and try the charge which they did make and try, and to issue a 'Decree' thereon?"

If this be so, to what indefinite and very expanding limits may not the exercise of usurping, malicious and vindictive power go with men sitting in the seat of a *quasi* judicial tribunal?

This defendant and his co-commissioners were trespassers; trespassers of the most wanton, unexampled; and tremendous power.

To repeat, the burden is upon the defendant to justify his act; not upon the plaintiff to show that it was illegal.

Waterman on Trespass, Vol. I., p. 4.
Wait's Act. and Def., Vol. III., p. 316.
Wait's Law and Prac., 11 *et seq.*
Wait's Act. and Def., Vol. VIII., p. 191.
Id. Vol. I., p. 473.
Suppl't Wait's Act. and Def., Vol. VIII., p. 384.
Id. Vol. V., p. 30.
Id. Vol. VI., p. 51.
Also, Board of Audit, Act June 20, 1864, Sec. 337, 17 Stat., pt. 3, p. 116.
Frost *vs.* Saltonstall, U. S. C. Dist. Mass., Opinion by Justice Colt, Nov. 14, 1887.
Dicey on Parties to Actions, Ed. 1878, margin p. 427.
Addison on Torts, Wood's Notes, Vol. II., Sec. 1043.
Secs. 747, 748, 749, R. S. U. S.

Sec. 74. In all courts of the United States the parties may plead and manage their own cases personally, or by the assistance of such counsel or attorneys at law as, by the rules of the said courts, respectively, are permitted to manage and conduct causes therein.

Sec. 748. No clerk, assistant or deputy clerk, of any territorial, district, or circuit court or of the Court of Claims, or the Supreme Court of

the United States, or marshal or deputy marshal of the United States within the district for which he is appointed, shall act as a solicitor, proctor, attorney, or counsel in any cause depending in either of said courts, or in any district for which he is acting as such officer.

Sec. 749. Whosoever violates the preceding section shall be stricken from the roll of attorneys by the court upon complaint, upon which the respondent shall have due notice, and be heard in his defense; and in the case of a marshal or deputy marshal so acting, he shall be recommended by the court for dismissal from office.

Sec. 747 limits this power to "courts of the United States."

Sec. 749 says, "shall be stricken from the roll of attorneys by the court upon complaint." This shows that the court, to strike the attorney from the rolls, cannot do it of its own motion; but only "upon complaint."

Page 8 of defendant's Brief says: "Its jurisdiction is certainly limited to a particular class of subjects," and "within the range of its jurisdiction." This, properly viewed, sustains the plaintiff's contention.

Bachman *vs.* Lawson, 109 U. S. 659 and 664, simply decided that a client that employed a second lawyer on the same case must pay the first lawyer employed, in accordance with the contract; this; and no more.

It is settled law that the acts of a *de facto* (only) judge, or commissioner (touching the litigants lawfully before him) are valid; although not a ***de jure*** judge.

Acts of a *de facto* officer are void as to himself; if he is not also an officer *de jure*. But such acts are good as for strangers or the public.

Andrews *vs.* Portland, 79 Maine, 484.
Adam *vs.* Mangel, Penn. 7 Central L. J. 185.
8 Atlantic Rep. 606.

Suit for damages against a justice of the peace; and contains a collection of cases.

Cook *vs.* Bang, 31 Fed. Rep. 643.

A Wisconsin case decided in 1888.
Pacific R. R. Commission is not a judicial body.

32 Fed. Rep. 241.

The matter upon pages 15, 16, 17, 18, 19, 20 and part of 21 of defendant's Brief is erroneous and immaterial; because it *assumes* that the Commission was a *Court of general and common law jurisdiction.*

Runkle *vs.* The U. S. 122, U. S. 543. L. Ed. B. 30, 1167.

A court-martial organized under the laws of the United States is a court of special and limited jurisdiction. It is called into existence for a special

purpose and to perform a particular duty. When the object of its creation has been accomplished it is dissolved.

3 Greenl. Ev. par., 470.
Brooks *vs.* Adams, 11 Pick., 441, 442.
Mills *vs.* Martin, supra.
Duffield *vs.* Smith, 3 S. & R., 590, 599.

Such also is the effect of the decision of this Court in Wise *vs.* Withers, 3 Cranch, 331, which according to the interpretation given it by Chief Justice Marshall in *ex parte* Watkins 3 Pet. 193, 207, ranked a court-martial as "one of those inferior courts of limited jurisdiction whose judgments may be questioned collaterally." To give effect to its sentences it must appear affirmatively and unequivocally that the court was legally constituted; that it had jurisdiction; that all the statutory regulations governing its proceedings had been complied with, and that its sentence was conformable to law.

Dynes *vs.* Hoover, 20 How., 65, 80.
Mills *vs.* Martin, 19 John. 333.

There are *no presumptions in its favor so far as these matters are concerned.* As to them, the rule announced by Chief Justice Marshall in Brown *vs.* Keen, 8 Pet. 112, 115, in respects to averments of jurisdiction in the courts of the United States applies. His language; is; "The decisions of this court require, that averment of jurisdiction shall be positive—that the declaration shall state expressly the fact on which jurisdiction depends. It is not sufficient that jurisdiction may be inferred, argumentatively, from its averments." All this is equally true of the proceedings of courts-martial. Their authority is statutory, and the statute under which they proceed must be followed throughout. The facts necessary to show their *jurisdiction* and that their sentences were conformable to law must be *stated positively;* and it is not enough that they may be *inferred argumentatively.*

The fact that this Commission preserved a "Record" of its proceedings, does not, as matter of law, make it a "*Court of Record.*" If it did, then every Executive Department; every court-martial; all temporary commissioners; would become, in law, "Courts of Record."

The proposition, squarely stated, reveals its utter absurdity and worthlessness. To say that the Treasury Department (having records); the State Department (having records); the Interior Department (having records); the Department of Justice (having records); the Pension Office (having records); the War Department (having records); the Custom Houses (having records); the Naval Offices (having records) within the Custom Houses;—to say that these, and all like these, that have records and preserve them, are "Courts of Record" is equally true with (to a legal mind) the inconceivable absurdity contended for by the defendant that this Claims Commission was a "Court of Record."

In contemplation of law, a "Court of Record" is a convertible term for

a court having either a common law, or general, jurisdiction, or a power to fine and imprison. No tribunal, whatsoever its name, in the absence of either or both of these powers, is, or can be, as matter of law, a "Court of Record." If they have neither or both of these powers, then the proposition that it is a "Court of Record" negatives itself.

COURTS OF RECORD.

8 Met. 168, 171.
22 Pick. 430.
6 Gray. 515.
37 Me. 29.
8 Pick. 168.
11 Mass. 510.
1 Cowen. 212.
3 Wend. 268.

The proposition is uniform and universal that public officers exercising judicial, or *quasi* judicial, functions are liable in damages, by reason of their acts performed without their jurisdiction; and judicial officers of inferior courts are also liable in damages growing out of acts done by them in excess of jurisdiction.

See the following cases:

In re Sawyer, 124 U. S. 220.
1 Pet. 328, 340.
13 Pet. 498, 511.
3 How. 750.
18 Wall. 457, 467.
104 U. S. 604.
113 U. S. 713, 63.
90 U. S. 18.
100 U. S. 371.
100 U. S. 339.
121 U. S. 1.
Isaacs *vs.* Swartwout, 10 Pet. 80.
Mitchell *vs.* Hamway, 13 How. 115.
Bates *vs.* Clark, 95 U. S. 204.

See especially—Commissioners of Bequests:

Aldridge *vs.* Harris, 2 B. and Ad. 395.
20 How. Dynes & Hoover.

The Act of Congress of June 1, 1872, requiring the practice, pleadings, forms, and modes of proceeding in civil causes, other than admiralty and equity, to conform as near as may be to those of the states where the courts are held, does not include the personal conduct and administration of the judge in the discharge of his separate functions; and such conduct is neither practice, pleading, nor a form nor mode of proceeding within the meaning of those terms as used in that act.

Nudd *vs.* Burrows, 91 U. S. 426; L. Ed. B 23, p. 286.

"A judicial department need not give effect to statutory enactments forbidden by the constitution."

Powell *vs.* Penn. 127 U. S , 678; L. Ed. B 32, p. 253.

Congress has no constitutional authority to lodge in a non-judicial tribunal (although in some matters exercising *quasi* judicial functions) the power to punish for contempts.

Searls *vs.* Warden, 126 U. S. 14.

This was a case involving such an alleged right to exist in the Mayor and Common Council of Lincoln, Nebraska.

Courts of Record are Courts having at Common Law power to fine and imprison the subjects of the realm

3 Stephens Comm. 269. 3 Black Com. 24, Co. Litt. 417, B. 260 a.

Woodman *vs.* Somerset, 37 Me., 29 (a leading case), held that Courts of County Commissioners in Maine, were not Courts of Record.

Lester *vs.* Redmond, 6 Hill, N. Y. 591.

The Marine Court of the City of New York not a Court of Record.

Wheaton *vs.* Fellows, 53 Wendell 375.

Justice's Court in Albany the same doctrine.

Mills *vs.* Martin, 19. Johns. 33.
Warren *vs.* Flagg, 2 Pick. 448.
Snyder *vs.* Wise, 10 Pa. St. 157 contains collection of cases.
Smith *vs.* Morrison. 22 Pick. 430. Probate Court not Court of Record.

COURTS AND COMMISSIONS; DISTINCTIONS BETWEEN THEM.

Gold *vs.* Vt. C. R. R. 19 Vt., 478.

Statutes passed in pursuance of Treaty stipulations to receive and adjust claims, authorizing certain "*Judges*" to do so; do not create Courts or Judicial Tribunals — but Commissioners.

U. S. *vs.* Ferreria, 13 How. 40.
Jecker *vs.* Montgomery, 13 How. 498.
Porte *vs.* The U. S. Dev., 59, Ct. Claims.
In re Petition Pacific R. R. Commissioners. Am. Law Reg. Oct. 1887, 621.

That no appeals were allowable from this Com. conclusively establishes that it was not a legal Court, and no inherent powers of Common Law Courts. For an excellent Digest of Courts and their definitions, See Am. and Eng. Cyclopædia of Law, Vol. IV., 449. Congress can vest the "*Judicial Power*" of the U. S. only in Courts ordained and established by itself.

Martin *vs.* Hunter, 1 Wheat. 304.
Stearns *vs.* The U. S., 2 Paine 300.
This Power is discussed in Stuart *vs.* Laird, 1 Cranch, 299.
Livingston *vs.* Story, 9 Peters, 632.
Hubbard *vs.* N. R. R. Co., 3 Blatch, 84.
U. S *vs.* Taylor, 3 McLean, 539.
U. S. *vs.* Ritchie, 17 How., 525.

Appeals lie from the Court of Claims, U. S. *vs* Klein, 13 Wall, 144. C. J. Chase discusses the origin and nature of this Court. The Third Act of the Con., Sec. 1, says "The Judicial Power of the U. S. shall be VESTED in one Supreme Court; and in such other inferior courts as the Congress may, from time to time, ordain and establish."

Sec. 2 declares "The Judicial Power shall EXTEND to all cases in law or equity, arising under this Constitution, the Laws of the U. S. Treaties," etc., etc. The first sec. grants the power; the second defines it.

1 Wheat, 327, L. Ed. Book 4, 103.

This Commission is NO PART of the "*Judicial Power of the U. S.*" These claims were claims against *shares* in a FUND — to wit: the Geneva Award — paid by Great Britain. The U. S. was only a *nominal* party — as an agent of distribution for monies, by it *recovered* — for division among its own citizens. The money had not come from the *people* of the U. S., but a foreign Government, under a Treaty, for a general purpose of indemnity. If the claims were against the U. S. as such — as a *Sovereign power;* them the *unpaid balance* of *two-thirds are enforcible* judgments in the Court of Claims. *They* were limited in *payment*, to a *fund.* See Congs. Record, May 22, 1886, for Senate debate on this subject; and the act of June 2, 1886, providing for payment of awards of this Com. on the *principle* that it was a "*Trust fund.*" See Sec. 3659 R. S. U. S., as to funds held in trust. The U. S. "*Judicial Power*" does not extend to distributing "*Trust funds.*"

See Weld *vs.* The U. S. decided at Oct. T. 1888. 1, Wheat, Id. THIS court can have no *appellate* jurisdiction except in those cases of law and fact to which the judical power extends. 1, Wheat. 332. "The language of the *constitution* is *imperative;* that of *Congress* implies *discretion.*" Story, J. Id, "Board of Commissioners to confirm Land claims, in Cala., not a court under the constitution, and cannot, therefore, be invested with any judicial powers conferred on the General Govn't." Same doctrine applied to a Land Commission created in 1824, May 26 — concerning French and Spanish Grants in Mo.

4, Stat. L. 52, 53, Brenner vs. Porter.
8, How. 235, 17, How. 525, L. Ed. Book 15, 238.

"We must not be misled by a name; but look to the substance and intent the proceeding." Justice Nelson, in 17, How. 526, 13, How. 40. "No appeal lies from a commissioner to adjust claims, to this court," Taney C. J. (in U. S. *vs.* Ferreira Id). 13 How. says: "If the Tribunal (a Commission) acts at all, it acts under the authority of the law and must obey the law." Again, Id. He says: "It is manifest that this Power to decide on these claims; is *not conferred on them as a function*, to be exercised in the *ordinary forms of a Court of Justice*." *These* claims were heard and decided by the *Territorial Judges*. Id. "It is too evident for argument on the subject, that such a Tribunal is not a judicial one; and that the act of Congress did not intend to make it one. The authority conferred on the respective *Judges* was nothing more than that of a Commissioner to adjust certain claims against the U. S. and the office of Judges, and their respective jurisdictions, are referred to in the law, merely as a designation of the *persons*, to whom the authority is conferred." * * *. "The decision is not the judgment of a Court of Justice." "It is the award of a Commissioner." "The act of 1834, calls it an award." "And an appeal to *this* Court from *such* a decision, * * * would be an anomaly in the history of jurisprudence." "An appeal might as well have been taken from the Board of Commissioners recently sitting in this city"—Washington, D. C. "But such power is not judicial in the sense in which judicial power is granted by the *Constitution* to the *Courts of the U. S.*" Id. "The question as to the character in which a *Judge* acts in a case of this description, is *not* a new one. It arose as long ago as 1792, in Hayburns case, 2, Dallas, 409, reviewed by Taney, C. J. in 13, How. L. Ed. B. 14, pp. 47, 51.

Ch. 159 P. S. Mass., Secs. 34 to 43, both inclusive, create the Bar of the Massachusetts courts; as much as the same statutes create the courts, themselves. The *source* of power is the Legislative body; the "General Court" of Massachusetts. Without this authority, no courts in Massachusetts could create a Bar.

20 St. 292. ch. 81. provides: —

"That any woman who shall have been a member of the bar of the highest court of any State or Territory, or of the Supreme Court of the District of Columbia for the space of three years, and shall have maintained a good standing before such court, and who shall be a person of good moral character, shall, on motion, and the production of such record, be admitted to practice before the Supreme Court of the United States."

This recent statute recognizes the plaintiff's doctrine; that is, "admission" which is conditioned on "good moral character." The converse of the proposition (for removal or expulsion from the Bar) is that immoral or dishonest conduct is the exclusive and indispensable condition precedent to removal or expulsion from office. To admit; morality. To remove; dishonesty. For admission; positive qualifications. For dismissal; negative qualifications.

The above is a "*summary summation*" of the whole doctrine of the *law* regulating the rights of attorneys; wherever the LAW is found and applied.

P. S. Mass. ch. 159, sec. 36, says, "The oath of office shall be as follows: —

"You solemnly swear that you will do no falsehood, nor consent to the doing of any in court; you will not wittingly or willingly promote or sue any false, groundless, or unlawful suit, nor give aid or consent to the same: you will delay no man for lucre or malice; but you will conduct yourself in the office of an attorney within the courts according to the best of your knowledge and discretion, and with all good fidelity as well to the courts as your clients. So help you God."

"Sect. 39 P. S. An attorney may be removed by the supreme judicial court or superior court for any deceit, malpractice, or gross misconduct, and shall also be liable in damages to the party injured thereby, and to such other punishment as may be provided by law; and the expenses and costs of the inquiry and proceedings in any court for the removal of an attorney shall be paid as in criminal prosecutions in the same courts."

These clearly show that the element of dishonesty is the exclusive cause for removal.

The same is true of the courts of all the states.

It is wholly immaterial that the word "judges" was used, either in the Act of 1874 or 1882: "A rose by any other name would smell as sweet." The legal meaning of the word "judge," in a legislative act, is determined by the context

If there was a "Bar:" then this Commission was grossly neglectful in not prescribing, by its "Rule," and having administered by the clerk (as is done in Massachusetts under this statute: and in this, the Court of the Constitution) an *oath*, to each applicant. No *office* can be legally filled; except the incumbent, or candidate, qualifies by an oath, duly administered. This is of the very essence of an office. If there is no oath administered; there is neither any filling of the office, nor any opportunity for the incumbent to violate his oath of office: because no oath has been administered. In Massachusetts, and elsewhere, the form of the oath to be administered to a candidate for membership of the Bar: is prescribed by the statute. The applicant for admission becomes an attorney at law; *when* the oath is taken. He then signs the roll of attorneys: — his own sign — manual. Then, comes the "Certificate of Admission;" by order of the court, under the seal thereof, bearing the *teste* of its clerk. This is the legal and uniform method everywhere: but in this Commission (of limited tenure and power) no such acts were done: there was no oath either prescribed, or administered; no authority to prescribe or administer any: no "roll of attorneys" to be signed by the member admitted; no parchment or certificate of admission. All the great and indispensable formalities of every legally constituted Bar were not only omitted: but never thought of. Rule 5 (pp. 8 and 9 of Record) distinctively provides that "any member of a bar, *having a good moral character*, of a court of any state, etc.," could be "admitted, ON MOTION." If there was a legal "Bar;" by what authority was such a "Rule" made? The real truth is that this was a sort of a planetary "Bar;" existing in the imagination of the Commissioners; and, from the

scintillations of the intellects of its (the Bar's) members, the Commissioners hoped to obtain the glory of its *reflected* light. The pretended "Roll of attorneys" was a myth; in fact, a mere list kept by the clerk, made up of the names and post-office addresses of the attorneys (as given in the several petitions), in order that the clerk might know where to address them. Yet; these commissioners (without a particle of *legal* evidence), would have this Court believe, the specious and glaring falsehood, that there was a "Roll of Attorneys." No greater sham ever received the indorsement of pretended respectability!

Their manifesto talks loftily about "judicial oaths:" but plaintiff asserts (and challenges denial and disproof) that neither of these Commissioners, under an oath "to tell the truth, the whole truth, and nothing but the truth," will say: that the pretended facts touching the plaintiff in this "Order" and "Decree" have in them, *any* element of *truth*. In other words; the plaintiff hereby and now charges and offers to prove that; in these things, this Record is as unmitigated and black a falsehood as ever emanated from the "Father of Lies," himself.

Look at the utter unreasonableness and gross injustice of the "Order" in this: to wit: that the plaintiff is notified to appear at ten o'clock in the forenoon (he asks for a short postponement of a few days, which is denied), and the despotic edict shuts the ear of the "Court" at four o'clock of that very same afternoon!—a despotic act which should condemn the authors to merited infamy; whether, at law, liable in damages to this plaintiff, or not. For this: a JUST administration of the LAW; will take good good care that they, and each of them, do not go, "unwhipped of justice." If this plaintiff can be struck down by the stiletto of an usurped authority; another, and another can be struck down. No man, and no set of men; are safe from the bludgeons and brutalities of usurped authority. The dearest rights of a human being: the acquisitions of a life-time; can be destroyed by the assassination of an "Official Order" loaded to the muzzle, (with malice and vindictiveness) of the vilest character.

"MALICE, is *always* proven by circumstances; its legal establishment is invariably by circumstantial evidence; and by surrounding circumstances."

"*Malice*," in this case; is shown,

1st. By the gross usurpation of authority of which the "Order" was born; by the utter lack of specification within the "Order" by the pretended facts, unsustained and self-contradictory; by the IMPASSIONED GENERALITIES, both of the "Order" and of the "Decree;" by the hot and maddened haste indicated by the word (at the close of the "Order"), "FORTHWITH:" by the grossly unjust shortness of the time for answering, denying in this, and overriding the rules laid down by this Court in *ex parte* Bradley, *ex parte* Wall, *ex parte* Robinson, and other analogous cases.

2d. Malice is further exhibited and proven by the "Order" (p. 13 of Record), dated "October 15, 1885," about THREE MONTHS after the original "Order;" showing thereby: no disposition to recant, or retract, or modify; but, instead, *lugging in* a new and pretended cause for their usurpation; by prating glibly about a *newspaper article* (of which there was no evidence of its authenticity), and which the courts of the land, have, *uniformly*, decided plaintiff had a right to publish, (if he saw fit to exercise the right). Their "Orders" and "Decrees" of July 13, 1885, had

been published broad-cast (by order of the Commissioners) by the "Associated Press" through the country; and the man that would not have responded would have been a *craven coward*, and *admitted the legality and justice of the order.*

Again; A condition of the restoration of the plaintiff to this *pretended* "BAR" was that he, "admit, *under oath;* that his statements in the affidavit of July 24 were *untrue.*" Plaintiff now says (as he has before) that he would have seen these Commissioners in the eternal fires of a bottomless Hades; or his own neck under the guillotine; before he would have retracted, (*as untrue*), an IOTA of *that* affidavit.

In this second "Decree" (written by the Presiding "Judge," REV. James Harlan,) is an inappropriate, inapt and uncalled for dissertation on "professional ethics." Plaintiff says; that if he desires any lecture upon "professional ethics;" he wishes it, (not from a minister of the gospel and accustomed to itineraries on the Western Circuits); but from some large-hearted, clear-headed, honest-minded, experienced lawyer, or judge!! *Then;* he will listen: and *not till then.*

The second "Decree" recites:

"*In contempt of their authority;*" yet, the Brief says (bottom p. 18) "the case does not come within Sect. 725, R. S. U. S., relating to contempts." They charge "flagrant, unprofessional conduct;" without reciting a *single fact*, showing the "flagrant, unprofessional conduct." The rule is, in bills in equity, if the complainant charges fraud and corruption; he must *set out the facts*, showing the "fraud" and "corruption." The use of the words "fraud" and "corruption;" is merely "sounding brass and a tinkling cymbal," without meaning, and without effect.

The "Order to show cause" (p. 9 of Record) charges "unprofessional conduct;" but "unprofessional conduct," in the *legal* sense, is, uniformly and invariably, dishonest dealings with the client in official transactions.

The pretended or imaginary specification (following this charge in the "Order") is, (if anything) that is; any sort of offence whatsoever; a "CONTEMPT." By no stretch of construction, or elasticity of rule of interpretation of language; can the *manufactured* specifications, be treated *legally;* as "unprofessional conduct." If plaintiff committed any offence whatsoever, under the *law;* (and no punishment could follow except he *had* violated the *law*) then; it was in "*contempt*" of the right and authority of the Commissioners to be free in their "official consultations" from the alleged interruption. Such "interruption" had not a single element of "*dishonesty;*" or professional misconduct toward the *client.*

Again; the "Order" says "for the purpose of preventing the occurrence of LIKE attempted *intimidations* in the future;" but what "INTIMIDATIONS?" This language necessarily admits and states; that the plaintiff had been guilty of an attempt to intimidate. This clearly (if true) would be a "*contempt.*"

Defendant French cannot, NOW; in this court, say that the language used in the "Order to Show Cause" *meant* what obviously (they, the Commissioners), *then;* did *not intend* it to mean. They meant to charge "contempt;" but, bunglers as they were; charged *nothing.* It is for this Court, as a Law Court of last resort; to construe that "Order," and see what it meant; *if it meant anything.*

If anything; it was "contempt."

Under Sec. 725, R. S. U. S.; there are only two penalties or punishments for contempt, to wit: fine or imprisonment. In law; there neither are, or can be, any other penalties, punishments or legal consequences; affecting the contemnor.

By an inflexible rule and practice governing the courts in dealing with "*contempts;*" the affidavit of the contemnor (disclaiming any intent to commit the alleged contempt), as plaintiff did (pp. 10 and 12 of Record) clearly purged the alleged contempt; and this Commission could lawfully go no further. The affidavit of non-intention (as is shown in the history of every case of adjudged contempts from the date of its origin down) *acquitted the plaintiff.*

See 63 N. C., 395 and 408, and opinion of Chief Justice Wilmot cited in Peck's Case, p. 507.
Peyton's Appeal, 12 Kans., 405.
52 American Decisions, 302. Note.

"An attorney cannot be disbarred for contempt, as from time immemorial fine or imprisonment is the only penalty for contempt."

12 Am. Dec., 186.
State *vs.* Start, 7 Iowa, 499.
Ex parte Smith, 28 Ind. 47.
People *vs.* Tiernan, 1 Cala. 143.
Turner *vs.* Commonwealth, 2 Met (Ky.) 617.
Rue *vs.* Commonwealth, 18 B. Mon. 472.
Dillon *vs.* State, 6 Texas 55.
Jackson *vs.* State, 21 Texas 668.

If the plaintiff in his affidavit of non-intention, had sworn falsely; THEN, the remedy (and the only remedy) was by indictment for perjury. Page 14 of the Record (expressly re-affirming the "Order" of July 29) says "*in contempt of its authority.*"

Again was the "Order" of removal invalid; because indefinite in duration; — closing "*until otherwise ordered.*" Any judicial order (to be legal) must be in definite terms for a definite time. Any order or sentence that is conditional, or in the alternative; is VOID.

Cooley on Torts, p. 497.
Rex *vs.* James, 5 B. and Ald. 894.
In re Hamuel, 9 R. I. 248.
Crawford's Case, 13 Q. V. 613.

Again: is "*malice conclusively* established;" by the fact that the "Decree" is accompanied with another *permissive* "Order" (bottom p. 14 of Record), not only permitting; but *inviting* and *encouraging* the *substitution* of other attorneys; in the place of the plaintiff. *This;* in violation of the inflexible rule of honesty, and fair dealing, governing *all*

courts; to wit; that no attorney can be *substituted* in place of another (except by *consent*) until the incoming attorney, refunds to the outgoing attorney, all his expenses; and either pays him for his services in *full*; or *secures* them to the satisfaction of the attorney, who has *earned* them.

See Peck, Adx., *vs.* U. S. Book 26, p. 46, L. Co-op. Ed., at close of opinion. This *part* of the opinion, is omitted in the regular edition of Otto.

An attorney is an "officer of the courts" in which he acts, professionally. Robbins and Jackson *ex parte* 63, N. C. 309; Bacon's abridgment, 11, 506; Comyns Digest, title "Attorney." Book 13; *ex parte* Summers, 5, Ire. 149; Attorneys are "Officers of the Court," as Sheriffs and Clerks are. Sec. 725, R. S. U. S. provides that "Officers of the Court" can be punished for "contempts" only in their "official transactions." Plaintiff Manning was engaged in no "*official transaction*," as charged in "order" and "decree."

By this substitution "Order," the Commission violated one of its own "Rules;" when it required (*as it did*), in the bankruptcy cases: that the attorney of the assignee (substituted for the bankrupt) could *not take the place* of the bankrupt's attorney: *until* his disbursements were refunded; and *security* entered for his fees.

This controversy arose out of Case 5549, Frederick Berthoud *et al. vs.* U. S. The Commission permitted the substitution of the assignees of Mr. Berthoud. The plaintiff (as Berthoud's attorney), objected, and protested; that it was *illegal!!* *Since then;* upon common law actions, brought by the bankrupts, against the assignees: the following courts have decided that the Alabama Commission was wrong: — grossly wrong: to wit: Court of Appeals in Maryland; the Supreme Court, in General Term, of the 1st Judicial Department of the State of New York: the Supreme Judicial Court, in banc, of Massachusetts: the Supreme Judicial Court, in banc, of Maine; the Circuit Court of the United States for the Eastern District of Louisiana: and other tribunals.

This Court; with the record before it; has the right (and plaintiff contends it is its duty) to determine whether the pretended causes were (*in law*) adequate and sufficient; *for the "Decree."* This Court can review the matter *de novo*, and decide for itself anew; as though no *decision had been had.*

The defendant refers to mandamus: but mandamus with this Court (the Court of the Constitution) is one of *original* jurisdiction; and the writ does not lie from this Court (except to one of the inferior courts) of the United States. *This* Commission was *not* an "inferior Court of the United States." If the plaintiff had made the application for the writ; he would *thereby;* have *tacitly* admitted, that this Commission was one of the "inferior courts of the United States." There was no *other* court to which he could apply. The Commissioners were scattered in different states. The *remaining life* of the Commission, was *so short*: that (even if the writ had been granted) it would have had no *practical* benefit; but the right (if it existed) to resort to mandamus: is neither an *excuse* for the defendant's conduct; nor an exclusion of the plaintiff from the remedy which he now seeks.

Commissions in England and in the United States may be, and often are, legally and constitutionally widely different in their jurisdiction and powers.

Great Britain is governed by a Parliament, limited only by the *unwritten* law of the realm, and a *quasi* discretion of the Crown. The United States, on the contrary; is governed by a *written* Constitution, wherein is the sole source of the authority of its Congress, and its courts. A commission in England is limited by the terms of the Act of Parliament creating it; and Parliament, in turn, is limited only by its *own will*. Therefore, a commission in England may be endowed by Parliament, with all the authority and jurisdiction existing in the Constitution of the United States; and *more*. The only limitation is the judgment of Parliament; but Congress, in creating commissions; is limited (not by its judgment exclusively); but by the principles and provisions of the Constitution, which, itself, creates Congress. Hence, in the United States; the powers of a commission are defined, not alone by the Act that creates it; but by the Constitution, which, in turn, is the source of the existence of Congress. It follows; that any power conferred upon a commission by an Act of Congress; must be tested in its limitations, by Constitutional provisions. *Any* power *beyond* this; is unqualifiedly void. Hence, the doctrine; that the power to punish for "contempts:" *nominally* lodged in a commission, is the conferring of a *nominal* power, without the *reality;* and the commission is as powerless in this regard, as if the power, *eo nomine*; was *unconferred*.

ANALYSIS OF CASE OF RANDALL *vs.* BRIGHAM.

7 Wall. 523-540; 11 Allen (Mass.) 472.

The principal (if not the only) case relied upon by the defendant to sustain his contention as to the validity of the "Decree" is that of Randall *vs.* Brigham.

The defendant cites this case in SIX places on his Brief; pp. 16 and 17, twice on p. 18, and pp. 20 and 22. He "rings every possible change" on this case in *his* favor; when (*as matter of fact*) and as matter of *law;* carefully examined, it is *against* the defendant's contention; and in favor of the plaintiff; as follows; to wit:

The initial fact of Randall's disbarment by Judge Brigham in the Superior Court in Massachusetts was; (as contained in the charge against him) *dishonesty towards a client*.

(Page 20, defendant's Brief, containing citations from 7 Wall., says; "The information *imparted* by the *letter* was sufficient to *put in motion* the authority of the court, and the NOTICE to the plaintiff was *sufficient* to bring him before it; to explain the *transaction* to which the *letter* referred"); showing two things:

1st. The Superior Court did not act of its *own motion*; but on *information* imparted by a *letter*.

2d. The *notice* to Randall to appear and answer gave him *several* DAYS (not a few hours) to *answer*.

In 11 Allen (Mass.) 472, the court says: "The Superior Court is clothed with general jurisdiction, *both* civil and criminal, and in nearly all its doings it proceeds according to the course of the *common law* * * *."

"The authority of the court over its officers and the *power* to remove an

attorney for misconduct or malpractice, although conferred in express terms by General Statute, C. 121, sec. 31, are nevertheless incident to all *common law courts* of *general jurisdiction*, and the proceedings in SUCH cases *are to be deemed to be taken according to the course of the common law.*"

"The authorities are decisive that the doings of an *inferior court* in relation to *such* a subject-matter cannot be revised or corrected, *after judgment*, by *this* court on a writ of CERTIORARI."

Referring to Cook, Petitioner, 15 Pick. 234, the court says, on p. 237:

"The same doctrine is laid down in Co. Lit. 288: "A writ of error lyeth when a man is grieved by any error in the foundation, proceeding, judgment, or execution. But without a judgment, or an *award* in the nature of a *judgment*, no writ of error doth lie; for the words of the writ be, *si judicium redditum sit;* and that a judgment must be regularly given by judges of record, in a COURT OF RECORD, and not by any other *inferior judges in base courts*, for thereupon a writ of false judgment doth lie.' "The same general *principle* is laid down, and has been frequently recognized by this i. e. Mass. court."

The defendant cannot, for an instant; contend that Randall *vs.* Brigham sustains his position; *unless and until* he, the defendant, can show *legally* (not by a heated and anxious imagination); that the Court of Commissioners of Alabama Claims was a court of *general and common law jurisdiction;*—such as was the Superior Court of the Commonwealth of Massachusetts, wherein Mr. Justice Brigham presided, and made the order of disbarment.

Defendant does not even *attempt* to assert: that this Claims Commission was a *common law* court of *general* jurisdiction. In fact: the Supreme Judicial Court in Massachusetts has expressly said, *supra*, 149 Mass., that it was not one of the courts of the United States; but that it was merely an inquest, or like a committee of Congress.

Heard *vs.* Sturgis, 146 Mass.
Manning *vs.* Sprague, 148 Mass., p. 18.
Manning *vs.* French, 149 Mass. 585.

Defendant's Brief (p. 26) says: "We assume, without consideration, that it was not one of the inferior courts of the United States within the meaning of Sec. 1, Art. 3 of the Constitution of the United States, and like the Courts of the Territories of the United States it had only the powers which the Statutes confer upon it."

Thus, the authority quoted to support the defendant; is squarely and unqualifiedly against his contention. The corner-stone; the substratum of the defendant's case; rests entirely and exclusively upon the *alleged* proposition; that this Claims Commission was a court of *general and common law* jurisdiction. Remove *these;* and the defendant's case sinks out of sight; as, recently, in Pennsylvania, dwellings have followed the crust (through the excavations of miners) into the bowels of the earth. This *shell* of the defendant's case broken; (and it is a complete wreck) nothing remains but the crumbling pieces, impossible to put together.

If this defendant prevails in THIS Court; *then*, it announces the doctrine that a Claims Commission is a court of *common law and general* jurisdiction; having the *power* to try *offences; impose sentences* either of *fine* or *imprisonment*, or *both;* and, thereby, utterly annihilate and reverse the sound principles; laid down in the Great Western Ins. Co. *vs.* U. S., 112 U. S., and in similar cases.

In Randall *vs.* Brigham, 7 Wall, 523; L. Ed. Book 19, p. 285; this court says: "Judges of limited and inferior authority are not liable to a civil action for any general act within their jurisdiction." This, *conversely* stated; can only mean that judges of limited and inferior authority ARE liable to *civil* actions for their judicial acts; *without their jurisdiction.*

Again, Mr. Justice Field says: "The Superior Court of Massachusetts is a court of *general* jurisdiction, and is empowered by statute to admit attorneys and counsellors to practice in the courts of the State upon evidence of their possessing good moral character, having devoted a prescribed number of years to the study of the law, in the office of some attorney in the state, and to remove them, 'for any deceit, malpractice, or other gross misconduct.'"

Both the admission and removal of attorneys are judicial acts. It has been so decided in repeated instances; it was declared in *ex parte* Secombe, 19 How. 9; and confirmed in *ex parte* Garland, 4 Wall. 378.

This quotation clearly shows that this Court of the Constitution based its decision exclusively on two grounds:

1st. That the Superior Court of Massachusetts was a court of general jurisdiction; and,

2d. Was "empowered by statute to admit attorneys and counsellors to practice in the courts of the state."

But such a case as that is not the case at bar.

In the Massachusetts case, the court ordering the disbarment had, as admitted, common law jurisdiction; and express statute power to admit and remove. If this defendant can show that this Claims Commission had "common law jurisdiction and express power," by the Acts of 1874 and 1884, "to admit and remove attorneys at law;" then the plaintiff will admit that the commission had the jurisdiction to make the "Order;" otherwise, not.

Such an admission leaves open the only question; to wit: "Whether the method of exercising such power was legal and justifiable?" *Clearly, not; because this Court of the Constitution again says:*

"The manner in which the proceeding shall be conducted, so that it be *without oppression or unfairness*, is a matter of judicial regulation." The vital *part* of this quotation is that the proceeding be "*without oppression or unfairness.*" It is impossible for any HONEST, FAIR, IMPARTIAL, human mind to conceive of a greater, more infamous, contemptible and damnable act (under the guise and shield of *quasi* judicial authority) than the SIX hours allowed to this plaintiff by this Claims Commission in which to answer the "Order to Show Cause."

The opinion by Mr. Justice Field; shows that Randall was allowed *five days*, to appear and answer.

Whatsoever disposition, this Court of the Constitution may make of this case; mark it; the impartial verdict on the true history of this case by every honest mind will be that this "*forthwith*," precipitate, hot-haste, maddened action of these commissioners by their *six* hours despotism; is at once an indubitable, ineffable and ineffaceable disgrace to the authors of that tyrannous, oppressive and utterly damnable "Order" of July 24, 1885, signed by the Reverend James Harlan, of Mt. Pleasant, Iowa, Asa French of Braintree, County of Norfolk, and Commonwealth of Massachusetts, and Andrew J. Draper, of Albany, in the State of New York.

Justice often steps with stealthy and muffled feet; but, nevertheless, STEPS with the absolute certainty and severity of Eternity, itself.

"The mills of the Gods grind slowly;
But they grind exceeding sure."

Most respectfully to this Court of the Constitution, the plaintiff hereby says, that he has hitherto, and now conceives it to be a solemn duty, to follow these official offenders to the laws limit, and this for one purpose; if no more; the *vindication* of an *honorable* profession; and to show (that, in the United States; a country governed by a written constitution of delegated powers from the people) BARS of the courts have RIGHTS to be respected and *enforced;* as well as the Bench;—always remembering the historic fact, (without exception,) that every able and honorable Bench, acquitting itself with uniform credit; has invariably been made up, exclusively, of able and experienced members of the Bar;—not the Bar, and the Pulpit.

REVIEW OF OPINION OF THE SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS IN CASE OF MANNING *VS.* FRENCH, REPORTED IN 149 MASS. REPS.

This Opinion (filed June 20, 1889) is included within five pages. Two pages are devoted to extracts from the Acts of June 23, 1874, and June 5, 1882; and two pages are devoted to quotations from the "Rules" of the Commission and said Acts; and to discussion of the question; "Whether the Commissioners were Commissioners *de facto*, or *de jure*, in July, 1885." One page only is set apart for legal discussion of the principal issue in the case; "Whether the 'Order' and 'Decree' complained of were valid, or invalid?"

This one page is condensable (as a clear statement of the law) into about five lines; to wit; "Section 3 of the Act of June 23, 1874, gives power to the Commissioners to make all needful rules and regulations for regulating the forms and modes of PROCEDURE." In *this* clause, "all needful rules and regulations for regulating forms and modes of procedure;" THIS Court of last resort, in Massachusetts, finds the ONLY and exclusive source of power for the "Order" and "Decree."

Briefer and clearer, still; is the proposition; to wit; "The rules for regulating forms and modes of *procedure* grant to the Commission power to create a bar! ! ! ! ! !"—A most astounding proposition! !

This conclusion of law on this proposition, BEGS the whole question; to wit; "What was the jurisdiction, and the nature of the jurisdiction, of this Commission to try the *facts as to amounts and validity of Alabama Claims?*"

The "needful rules and regulations for regulating forms and modes of procedure" obviously (to an unbiassed and unprejudiced mind) relate, necessarily, logically, legally, and exclusively (and can only relate) to the presentment of the *facts* of the *claims* contained in the "Petitions;" which the Act provides as the mode; *i. e.*, the mode in equity of asking rights from the *Government*, and the *only* mode of asking *these* rights in equity of the Government; as the Petitions of Right, to the British Parliament, and the Petitions for Indemnity to the United States Court of Claims. The presentment of a petition to a Government is *invariably* by the *claimant* (in the legal form of *petition*) by *himself.*

The Act of June 23, 1874, Sec. 11, distinctly provides,

"All claims shall be verified by oath of the claimant, * * *"

If Congress had intended to provide, as the Massachusetts Court says, "it is manifest that it was not intended by the statutes that claimants should be compelled personally to PRESENT their claims," and that petitioners could present claims and obtain judgments thereon (without the actual legal act and sworn oath of the petitioners, themselves) by agents or attorneys; then, obviously, Congress would have so said. Congress intended no such thing. Congress, from the very nature of the claims, said, absolutely,

1st. That the petition be sworn to by the claimant, himself; and

2d. That no judgment could be entered; except upon *such* petition, thus *sworn to* by the *claimant, himself.*

If Congress had intended that the petitions could be *presented*, and judgments obtained under them, by *agents* and *attorneys at law;* the law would have contained it. It did not say so. When the Massachusetts court says; that the statutes did not intend that "claimants should be compelled personally to present their claims," they state not only what is not in the Act; but a direct and unqualified misstatement and misrepresentation of what *is in the Act;* to wit; that "Claimants must sign and *verify their own claims.*"

Again; (the plaintiff regrets to say) that the Supreme Judicial Court of Massachusetts, has not, in this Opinion of June 20, 1889, quoted fairly, from Section 3 of the Act of June 23, 1874, in this; to wit; that the *pivotal, vital, decisive, indispensable,* portion of THAT *part* of Section 3 which said Court quotes (the said court pretends to quote in full; but only garbles it in part) *is omitted.* The omitted portion is this (contained on p. 6 of Defendant's Brief), as follows; to wit; "not contravening the laws of the United States, or the provisions of this act." This portion; is the *very bowels* and *essence* of the quotation from the 3d Section made by the Massachusetts Court. The legal result is this; "that this clause throws the *burden of proof* upon the defendant to show that the quoted Rule 5 (on which defendant relies) was not "IN CONTRAVENTION OF THE LAWS OF THE United States, or the provisions of this act." If Rule 5 "contravenes any law of the United States, or any provision of this act;" *it is admittedly* VOID. Plaintiff contends that Rule 5 is in direct violation of the following provisions; to wit:

Sec. 11, Act of 1874. "All claims shall be verified by oath of the claimant, and filed in said court within *six* months next after the organization thereof, as provided in Section 8 of this act; and no claim shall be received, docketed or considered that shall not have been so filed within the time aforesaid; but every such unrepresented claim shall be deemed and held to be finally and conclusively waived and barred."

This language shows, beyond question; that the claimant (*must himself, in his petition*) appear before the Commission; and *not by attorney.* Appearance by attorney would *defeat* his claim.

Again; the law evidently contemplated that the Commissioners *themselves*; are both to take the testimony, and try the cases.

Sec. 10, Act 1874, says; "that each of the said judges shall have authority to administer oaths and affirmations, and to take the *depositions* of *claimants*, parties, and witnesses, in ALL matters pertaining to the *presentation* or *examination* of said *claims.*"

Again; Sec. 11, *Id.* says; "that it shall be the duty of said court to receive and examine all claims admissible under this act that may be *presented* to it * * *," "and to decide upon the amount and validity of such claims, in conformity with the provisions hereinafter contained, and

according to the principles of law and the *merits of the several cases.*"

This shows that the Commission was to act upon the same principle as a referee, or auditor; to examine vouchers and testimony, and report the *facts back to the court.*

By Sec. 14, *Id.;* "that the said court shall report to the Secretary of State a list of the several judgments and decisions made by it; a certified copy of which shall, upon the conclusion of the business of the said court, be by him transmitted to the Secretary of the Treasury."

"This commission is obviously directed by Congress to perform the function of *referee or auditor.*"

Again; Sec. 17 "* * * and in the *hearing of the cause* any party claiming, etc." further shows that the party or claimant shall appear, by *himself.* After claimant had *himself* filed his *own* claim; he THEN, upon the principle of *agency*, could employ an attorney, if he saw fit, on the maxim, "*Qui facit per alium, facit per se;*" but the *judgment* can only be entered on the *petition* of the *claimant, himself*; duly verified, under oath.

Sec. 18, *Id.*, (alluding to the compensation of attorneys) confirms this view of the law.

Sec. 17 refers to Sec. 15 of the Judiciary Act, approved September 19, 1789.

Sec. 10 provides that if any claimant should swear falsely, he was liable to indictment and trial in the District or Circuit Court of the United States, etc.; thus showing that this Commission had no criminal jurisdiction to try the parties for any perjury committed in proceedings before it.

Sec. 3 says; "Such rules and mode of procedure shall conform, as far as practicable, to the mode of procedure and practice of the Circuit Courts of the United States; said court is hereby vested with the same powers now possessed by the Circuit and District Courts of the United States to compel the ATTENDANCE and testimony of parties, claimants and witnesses, to preserve order and to punish for contempts; and in all claims which shall be presented before said court, the *person* or *persons prosecuting* such *claims shall* be deemed the *complainant* and the United States shall be deemed the respondent."

This clause establishes, unqualifiedly, two things:

1st. That the rule and mode of procedure *should conform* to the mode of procedure and practice of the Circuit Courts of the United States; and

2d. That in the matter of getting *evidence* before the court (without which there could be no administration of justice, *anywhere*) the Commission had *power* to preserve order, and punish for contempts; *but in no other matter.*

There is a uniform, universal, well-settled distinction in *all* courts (high or inferior) in the law of contempts; to wit: that refusal to ATTEND as a *party* or *witness* (on proper subpœna issued) is punishable as a contempt committed in violation of the *subpœna;* but *this* power stands ALONE, *independent;* and is conferred, *ex necessitate*, BECAUSE no *hearing* could be had, except the *power* existed to compel the *attendance* of *witnesses;* but *here* (in this commission) the *power ceased*; *either in terms, or by implications.*

These issues, plainly stated, upon ever-present principles of natural justice, are embraced in these propositions; to wit:

1st. The law, in these acts of 1874 and 1882, in express terms, absolutely requires every claim to be presented by the owner of the claim.

2d. The claim, when presented to the Commission, duly verified and filed, can *then* be prosecuted by an agent, or attorney, duly employed by the claimant, thus *rectus in curia.*

3d. The claimant, if rightly in court, as the principal, as the constituent; can, or not (optionally), either prosecute his own claim, himself; or employ an attorney.

4th. If an attorney is employed by the claimant; then, by an ever-present, universal principle of natural justice, guaranteed and protected by the organic law of the United States, the agent, or attorney, acquires a RIGHT, (absolute and indefeasible) of which this Commission could not, lawfully, deprive him; by "Order" or "Edict."

5th. The difference between the '*presentment*," and "*prosecution*" of a claim before this Commission (under this act of Congress) is this; to wit: in the *Commission* the claimant, *himself*, *must* verify and *present* his *own* petition. In an ordinary common law court; the attorney, on *behalf* of the claimant, (could *present*, as an attorney, and *prosecute*, as an attorney) the right, or claim, to final judgment, as the *agent*, or attorney; *without* the personal intervention of the claimant, himself.

Briefly; before this Commission, A. B. must, and can only, verify and present his own claim. Hence, *ex necessitate*, an attorney is utterly valueless.

In a common law court, A. B., as a client, can be lawfully represented by a member of the bar, both in the presentment and prosecution of his claim.

In other words; before this Commission, the right of substitution by attorney in the *presentment* of a claim is *denied*. In the common law court, he is admitted by an attorney at law, a member of the bar; and is, by *this* member, lawfully *represented;* because the member of the bar, being *created by the statute* (and *not by a rule of court*) is an *officer* of the court, and, as *such officer*, is authorized to represent A. B. or C. D., as clients.

In Great Western Ins. Co. *vs.* U. S., 112 U. S., p. 196, the Court says:

"If this latter proposition be sound, we deem it inappropriate to express any opinion on the other, because the fund in the treasury, paid under the Geneva award, has been already largely distributed under the decisions of one "*special commission*" appointed for that purpose, whose powers have expired, and is now under administration by *another commission* created for the same purpose by another Act of Congress. And although it is said that neither of these *commissions* could, under the law of its creation, take cognizance of appellants' claim, it is matter of public notoriety that the subject of claims of this class is occupying the attention of Congress, and bills on that subject are now pending before it."

Idem, p. 200, the Court says:

"Congress has provided a *commission at home* to pass upon the *claims* asserted under the treaty.

"Its action was rather in the nature of a *commission* to *ascertain* the *facts* than a *judicial tribunal*.

"In the case of the Geneva Award, one such *commission* has been created by act of Congress, and its term of service has expired. *Another is now in existence*, under another act, for the *same purpose*, namely, the distribution of the sum paid under that award, and Congress is still devoting its attention to other means for the proper distribution of the remainder of this fund."

This case was argued October 14, 1884; and decided November 10, 1884; and, consequently, was the *law*, as established by this Court *nearly a year prior* to the "Order" of removal; in which (in obvious *defiance* of *this law*) THESE Commissioners announced *themselves* a "*Court of the United States! !*" Plainly, it was a case of audacity, and usurpation.

The word "commission" is derived from the Latin noun "commissio;" from the verb "committere;" "to commit; to intrust to some person or persons a charge, duty or office by a *superior power*." Bouvier Dict'y.

Worcester:—"A company of persons joined in the exercise of some duty, or the charge of some trust; to do things as an *agent for another*."

"Commissioner;" "A person who has a commission or warrant from the proper authority to perform some office, or execute some business *for the person or government which employs him*; as commissioners for settling the bounds of a state, or for adjusting claims." "County Commissioners are administrative officers invested by local laws with various powers as to roads, court-houses, etc., and the financial matters of a county."

The very word and its etymology indicates an *executive* or *administrative duty* to be performed. In adjusting claims; simply to *find facts*, and to exercise a *judicial* power ONLY in determining what FACTS shall be *considered;* and held as *evidence* of authority, to find the *amount* due on the *kind of claims* specified in the Act. They are "*judges*" simply of these *facts*, for *these purposes; and no more; or otherwise*. If they are "*interrupted*" in the performance of *these functions* by *force; then*, the persons guilty of the "*interruption*" are to be complained of to the *authorities* having jurisdiction of *such offences;* either by statute, or common law. The Commissioners, themselves, have no power to try offences committed in their presence; any more than an individual has whose rights of property are forcibly interfered with by another.

If Sec. 3, Act June, 1874, conferred on the Commission, the "power to punish for contempts" — then *pro tanto*, that Sec. is unconstitutional and void. Congress can confer no SUCH power on SUCH a Tribunal.

Ex parte Whitcomb, 120 Mass. 118.
Rhinehart *vs.* Lane, 14 Vroom, N. J., 311.
District Columbia *vs.* Cluss 103, U. S., 705.

The first case in Mass. it was held that an act of the Legislature purporting to confer "contempt powers" on the City Councils of Boston was unconstitutional and void, the same as to Justice's Courts in N. J., in the Cluss case (103 U. S.) that "Board of Audit was not a Judicial Body" — a Board similar to the Claims Commission.

See also — to the same effect — Manning *vs.* Sprague, 148 Mass., 18, in which this Com. was styled an "INQUEST" — "as *distinguished from a trial or law suit*"

Burns *vs.* Allen, 15 R. I., 32.
Windsor *vs.* Brown, 15 *Id.* 182.
Smith *vs.* Mason, 14 Wallace, 419.
P. S. Justice *vs.* The U. S., 14 Wall. 535. L. Ed., Book 20, 753.

An Ordnance Commission, established by the President and Secretary of War — to adjust claims as to guns, ordnance and munitions of war. This Court says: "This Commission, like all others with similar authority, possessed no *judicial* power." "It could not compel a claimant to appear before it and submit to its action." A good test of judicial power. A for-

tiori — this Claims Com. could not lawfully compel plaintiff to appear in response to "rule to show cause."

Plaintiff's appearance was under protest, denying its jurisdiction — to protect his rights (and prevent, if thereby he could) rash and inconsiderate action by the Com. It was an involuntary submission.

14 Wall *Id.*
Adams *vs.* The U. S., 7 Wall, 463. L. Ed. Book 19, 248.

"These Commissioners possessed no judicial power;" "the claimants *voluntarily* submitted their claims," etc.

THE FOLLOWING IS IN EXTENSION AND ILLUSTRATION OF THE FOREGOING: —

"Process"—is a judicial writ, issued by a Court, having power to do so —is original, mesne, and final; at common law means to compel a party to attend Court. Anderson's Dict.

"*Rule to show cause*," is not "*process*" in contemplation of *law*. The power given to the Commission, to "*issue process*"—was not a power to issue "*Rule to show cause*"—a *summary* proceeding. To "*issue process*" —re'ated solely to "*trying* and adjudicating *claims*."

Smith *vs.* Mason, 14 Wall, 419, L. Ed. Book 20, 748.

"That all the powers of the District Courts sitting in bankruptcy, may be exercised (in a *summary* way, *without process*) as by a Rule to show cause," etc., is denied. Sec. 4973, R. S. U. S. gives District Courts in Chambers—sitting in bankruptcy power to punish for contempts. Showing, thereby, that no such "Chamber power"—existed only when given in express language.

"*Procedure*"—is a body of Rules of *practice* or *pleading*; whereby, rights are effectuated by remedies; as distinguished from the sum of legal *principles*—known as *law*; and from the *law of evidence*. Anderson's Dict. "Procedure." "As near as practicable."

Ind. R. Co. *vs.* Hoise, 93, U. S. 291, 301, 117, U. S. 239 L. Ed. B. 93, 898.
Stewart *vs.* Dunham, 115, U. S. 61. Rev. Stat. Sec. 914.

"Official oath"—is an oath taken by an officer; "that he will faithfully discharge the duties of his office." R. S. U. S. Sec. 1757 Act May 13, 1884, repeals Sec. 1756, 23, St. L. ch. 193, p. 142.

"Judicial oath"—is an oath administered in some judicial proceeding, under direction of law." Anderson's Dict. p. 720. These Commissioners had taken no "*judicial oaths*;" but "official oaths" — (or) "*oaths of office*." Evidently they were all ignorant of the difference and distinctions between them. Their "*decree*" recites "*judicial oaths*"—but they had taken no such; but only "oath of *office*." Hence their "*decree*" had no basis, or authority, or sanction, whatever.

Olmstead *vs.* The Mayor of New York, 42 N. Y., Super. 487.
U. S. *vs.* Germane, 99 U. S., 509.
U. S. *vs.* Monat, 124 U. S., 307. *Id.* 313, 532.

In 42 N. Y., 487: "One who receives no certificate of appointment, takes no oath of office, has no term or tenure of office, discharges no duties, and exercises no powers depending directly on the authority of the law; but simply performs such duties as the person employing him may require of him, and whose responsibility is limited to *them*, is not an officer. *Office implies* the authority to exercise some portion of the *sovereign power of the State*."

In 99 U. S., 509, "officers are those appointed by the President and confirmed by the Senate, or by a court of law, or head of a department," etc.

Was the order of suspension, being void as a judicial act, to be sustained as an executive act? Three Attorneys-General of the United States have given opinions on this subject — Messrs. Stanbery, Hoar, and Devens — to which I call the attention of this Court. They will be found in 12th Opinions of Attorneys-General, page 68; 13th, page 154; and 16th, page 488. Attorney-General Stanbery says that the right of substitution prevails, and any claimant may prosecute his claim by an agent or attorney, whenever it "does not, from its very nature, require his actual personal intervention." Attorney-General Hoar says the head of a Department may decline to recognize, or may suspend, the transaction of business with an agent, or attorney, for frauds or fraudulent practices, attempted or committed by him in the prosecution of claims before the Department. Attorneys and counsellors at law are officers of the courts in which they practice; but they are not officers of the Departments; for, as Mr. Hoar observes, "as between the departments and agents prosecuting claims before them, no official relation exists." From the nature of the case, the claimant and his agent or attorney must be regarded as antagonistic to the party against whom the claim is made. He adds:

"The head of a department is not invested with any authority over the professional conduct of claim-agents, for the correction of mere private grievances, corresponding with that possessed by the courts of law over attorneys practicing before them."

The opinion of Attorney-General Devens is in 16 Opinions of Attorneys-General, 488. It affirms both the preceding opinions. There is not a word in either of these opinions which would support the contention, if it were made, that the suspension was ordered as an executive or departmental suspension. These commissioners were not departmental chiefs; nor were they authorized by any department to make or enforce this order of suspension.

In *ex parte* Wall, 106 U. S., 318, Judge Field says: "To disbar an attorney is to inflict upon him a punishment of the severest character."

In Champion *vs.* State, 3 Coldwater, 114, it was held that no court can impose upon an attorney other conditions for allowing him to continue to practice than those prescribed by law. This rule applies here.

The defendant, having exceeded his authority, has made himself liable to the plaintiff under the decisions in the cases of Piper *vs.* Pearson, 2 Gray, 120; 2 Bennett & Heard's L. C., 284; Calder *vs.* Halket, 3 Moore, P. C. 28; 2 B. & H. L. C. 288, and 299-305, note. The law laid down in these

cases has been the law of England ever since the time of Alfred the Great. The Mirror of Justices, treating of abuses of the Common Law, says, "It is abuse that justices and their officers, who kill people by false judgments, be not destroyed as other murderers, which King Alfred caused to be done, who caused forty-four justices in one year to be hanged as murderers for their false judgments." (Horne recites the cases.)

De facto officers held good; because public good requires it. Hussey *vs.* Smith 99 U. S. 24. Koontz *vs.* Burgess of Hancock, 64 Ind. 134. State *vs.* Carroll, 38 Conn. 458, 477. Phillips *vs.* Payne, 92 U. S. 132. Bolling *vs.* Leisner, 91 U. S. 596.

Decree by a judge whose commission had expired four days before, was held good in Croner *vs.* Bornest, 27 S. C. 437, in 1887. Justice of the Peace holding over—Hamlin *vs.* Kassafer, 15 Oregon, 457, 1887. 36 Alb. Law J. 95, 98. *De facto* officer defined in Creighton *vs.* Commonwealth, 83 Ky. 147 (1885). One who acts as an officer *de facto*, is estopped from denying that he is such an officer even on criminal prosecution. People *vs.* Bunker, 70 Cala. 115 (1886). State ex. rel. Herron *vs.* Smith, 44 Ohio St. 368 (1886). Norton *vs.* Shelby Co. 118 U. S. 442. 36 Alb. Law J. 506. Barkley *vs.* Levee Commissioners 93 U. S. 263, 104 U. S. 192. Re Sawyer, 124 U. S. 212.

The Commission had no power to order the Clerk to make the entry of its order on the Records. Such order was void, and the entries in pursuance thereof; were in *law*, non-entries. Clerk was not appointed by the Commission.

When the Senate sits as a Court of Impeachment, it can only do so on oath, or affirmation. Art. 1, Sec. 3, U. S. Con., showing, that, on *principle, judicial* functions require *additional official* oaths.

U. S. *vs.* Ferreria, 13, How. L. Ed. B. 14, 46. Taney C. J. says:

"And if they are regarded as officers, holding offices under the government, the power of appointment is in the President, by and with the consent of the Senate; and *Congress* could not, by *law*, *designate the persons to fill these offices.*"

See especially U. S. *vs.* Yale Todd in L. Ed., Book 14, 47, for a case decided in U. S. Court in 1794, on "*judicial power.*"

TENURE OF THE COMMISSIONERS.

1. They were *originally* appointed under the act of June, 1882. This appointment was ONLY for the duration of THAT ACT. It *could* not have been (by any *possibility*) for any longer or *other* term. THAT act created the *office;* its length, or duration; and the *general* appointing power of the President can only be set into operation by an ACT creating the office; and his *appointing* power is *necessarily* limited by the *act* which creates the *office.* One creates; the other fills.

2. The *extension act* could, and did continue the *office*; but *not the* OFFICER. HE could only be continued by the *appointing* power; the source of authority to fill (by *appointment,*) all *offices* created by Congress. The first is legislative; the second executive; two *constitutional* functions and limitations.

Cocke *vs.* Halsey, 16, Pet. 71, L. Ed. B. 10, 891.
Norton *vs.* Shelby Co. 118 U. S. 425 (B. 30, 178.)
Ralls Co. *vs.* Douglass, 105 U. S. 728, (26, 957.)

This case, County Bonds were issued by a *de facto* County Court Justice, and signed by a *de facto* President. Held good in hands of innocent, *bona fide*, holder; and the *acts* of a *de facto* officer (with *no legal title*) valid; so *for as the public and third persons are concerned.*

In 118 U. S. 425. This Court lays down the *broad doctrine;* "that, under a *Constitutional* Government there *cannot* be a *de facto* OFFICE; through (of course), there *may* be a *de facto officer.* Rock Island Co. *vs.* U. S. 4 Wall. 435 (B. 18, 419.) "Where public officers get power from language *permissive in form* (as to *individual rights*) this language in *law; becomes peremptory*, and removes *discretion*, and devolves positive and absolute duties."

These pretended Records are not duly and legally *certified;* and hence, in law, no *evidence;* and the defendant has not PROVEN HIS ALLEGATIONS.

The Clerk was not made by the law a *certifying officer;* hence any pretended certification is void.

It not being a Common-law Court; the Clerk had no power whatever to certify.

Custiss *vs.* Georgetown Co. 6, Cranch 233. (Book 3 L. Ed. 209.)

Sec. 4, Act 1874, makes the "*Presiding* Judge" the certifying officer; and again, *Id* Sec. 14, "The said *Court* shall report to the Secretary of State a list of judgments," etc. The Clerk is nowhere in the act made a certifying officer. He had no such power. Sec. 16, Act 1874, says:

"That as soon as the business of said Court shall be executed and completed, the records, documents, and all other papers in the possession of the court, or its officers, shall be deposited in the office of the Secretary of State."

Therefore: The Secretary of State is the only *legal* certifying officer.

Commissioners' Assumption of Power as "*Judicial* officers"—in the Constitutional Sense; was an UNQUALIFIED USURPATION.

In the "order" they *assumed* to exercise the functions and powers of Judges of U. S. Courts; and not as *Commissioners.* They base their justification on an alleged Judicial power as defined in the Constitution. If they did *not* have *such* power, their "*order and decree*" were and are void, *ab initio.*

118 U. S., 426-441, 442.

"The acts of a person *assuming* to fill and perform the duties of an office which does not exist *de jure;* can have no validity in *law.*" This Commission had no *constitutional* existence; only a *statute* existence. No constitutional prerogative could be exercised by it; only *statute* authorities.

Hildreth *vs.* McIntire. 1 J. J. Marsh, Ky., 206.

A mere *Legislative* Tribunal.

The distinction between Courts of original (or) general jurisdiction; and those of special and limited jurisdiction is this; "the former are competent

by their *constitution*, to decide on their *own* jurisdiction, and to exercise it to final judgment, without setting forth in their proceedings the facts and evidence on which it is rendered. *Their* records impart absolute verity. The *latter* are so constituted that their judgments may be looked through for the facts and evidence necessary to sustain them; their decisions do not furnish evidence of themselves to show jurisdiction and its lawful exercise. *These* must appear on the face of their proceedings; or *they* are *nullities*."

Kempe *vs.* Kennedy, 5 Cranch, 173. Turner *vs.* Bank N. A. 4 Dallas, 8. Dew *vs.* Turner, 9 Wheat, 541. Grignon *vs.* Astor, 2 How. 319, 341. And numerous other cases cited in Am. and Eng. C'y of Law, Vol. IV, 453. Am. and Eng. C'y of Law, Vol. IV, 450. Note 7, for cases "Courts of record have power to make rules for transacting their business; if they do not contravene Laws of the Land." Fullerton *vs.* Bank of the U. S. 1 Peters, 604.

A rule of Court retrospective in its terms; is void. Reist *vs.* Heilbrenner, 11 S. & R. Pa. 131. B. R. R. Co. *vs.* Marchand, 5 Iowa 468.

THE "MOTION TO DISMISS" MUST BE DENIED.

1st. Because not grounded within the "Rule."

2d. Because the Record raises a "Federal Question."

If this "Motion" is allowed, and the merits are considered, the prayer of the complainant must be granted:

1st. Because the Commission had, like a court martial, nothing but a statutory jurisdiction.

2d. Nothing is presumed in favor of such a tribunal; *all its acts* (when their legality is denied) *must be affirmatively sustained.*

3d. The statute created no "Bar" *in express terms*; and one could *not be created*, by implication, *under a pretended* "Rule."

4th. There being, then, no legal "Bar;" there was none to be disbarred from; and the *pretended disbarment was a sterile, empty form.*

5th. The "Order of Removal" being illegal, and without jurisdiction, and issued by what the old authorities call a "*base court*," the defendant is liable for all damages sustained by the plaintiff, as a consequence of the "Order."

CONCLUSION AND PRAYER.

Defendant's joint motion should be denied.

The controversy on the merits is involved; substantially, in only three questions or issues; namely:

1. Had the Commissioners the *power* to issue the "Order to Show Cause?"

2. Had they the *power* to make the "Decree?"

If they had NOT the power; then, this Court should reverse the judgment of the Superior Court of Massachusetts; direct a finding or ruling in favor of the plaintiff; and remand the cause to the Superior Court, to be there proceeded with, in accordance with the opinion in favor of the plaintiff. Plaintiff, hereby, requests this court so to do.

3. If the Commissioners HAD the *power* to make, and cause to be entered, the "Decree" complained of; then, was the *method* by them adopted for the *exercise* of *that* power lawful; and, in *law*, JUSTIFIABLE?

If they *had the power;* and the method of its exercise was neither legal, or justifiable; then the judgment of the court in Massachusetts should be reversed; and the cause remanded; to be proceeded with in accordance with such opinion, or finding.

Wherefore; in *either* of the above events; the plaintiff in error respectfully submits: and requests the remanding of the cause, as above indicated.

Respectfully submitted,

JEROME F. MANNING.

Plaintiff in Error.

LOWELL, MASS., Jan. 11th, A. D. 1890.

Supreme Court of the United States.

OCTOBER TERM, 1889.

No. 1188.

JEROME F. MANNING, PLAINTIFF IN ERROR,

vs.

ASA FRENCH.

MOTION OF DEFENDANT TO DISMISS THE WRIT OF ERROR, AND TO AFFIRM THE JUDGMENT, AND BRIEF THEREON.

CHAS. THEO. RUSSELL, JR.,
Counsel for Defendant in Error.

BOSTON:
PRINTED BY NATHAN SAWYER & SON,
No. 70 STATE STREET.
1889.

Supreme Court of the United States.

JEROME F. MANNING, PLAINTIFF IN ERROR,

vs.

ASA FRENCH ET AL.

Motion to Dismiss, and to Affirm Judgment.

Now comes Asa French, defendant in error in the above-entitled cause, and moves therein: —

First. That the writ of error be dismissed, because it nowhere appears therein, or from the record in the cause, that any title, right, privilege, or immunity under the Constitution of the United States, or any treaty or Statute of the United States, was set up or claimed by the plaintiff in error, or was decided adversely to any such title, right, privilege, or immunity.

Second. That the writ of error be dismissed, because the record shows that this Honorable Court has no jurisdiction in the premises.

Third. The defendant in error further moves, if this Honorable Court has and takes jurisdiction in the premises, that the judgment set forth in the record be affirmed, because the questions raised in the writ of error and the record are trivial and frivolous, and were correctly decided by the said Court.

ASA FRENCH,
By his Counsel,
CHAS. THEO. RUSSELL, Jr.

BRIEF OF DEFENDANT IN ERROR, IN SUPPORT OF MOTIONS.

Statement of the Case.

The original action was an action of tort brought by plaintiff in error in the Superior Court of Massachusetts, for the County of Middlesex, against the defendant in error, to recover damages for the act of the judges of the late Court of Commissioners of Alabama Claims (of whom defendant was one) in striking the plaintiff's name from the roll of attorneys of that Court, July 29, 1885. The Court was created by Act of Congress of 1874, chapter 459 (18 Sts. at Large, 245), re-established by Act of 1882, chapter 195 (22 Sts. at Large, 98), and extended by Act of 1884, chapter 62 (23 Sts. at Large, 33). The plaintiff was admitted as an attorney to practise before it, upon motion, January 26, 1875, under the 5th Rule of the Court. When the re-established Court organized, July, 1882, it provided by Rule 14 that all attorneys admitted to practise in the former Court should be recognized as attorneys in the re-established Court (rule printed in Exceptions, Record, pp. 8, 9). The plaintiff continued to act as an attorney of the Court until July 23, 1885. On that day he invaded the privacy of the judges when sitting in the Court building in official consultation, forced his way into the consultation room, interrupted the judges in the prosecution of their official duties, approached with his client one of the three judges (Judge Draper), and threatened him with hostile proceedings unless he changed the language of an opinion written by him. The facts are stated in the record of the proceedings printed in plaintiff's Exceptions (Exceptions, Record, p. 11). On the next day, July 24, the Court issued an order to plaintiff to appear July 25, and show cause why his name should not be stricken from the rolls of attorneys. The plaintiff appeared at that time, and the hearing was postponed until four o'clock P.M., at which time the plaintiff appeared with counsel, submitting

affidavits of himself and his client, and was heard through counsel on the question of his removal. The Court thereafter, July 29, filed a statement of the facts in the case, and made an order prohibiting the plaintiff from appearing and acting in the Court in relation to any matter or business therein pending, and from exercising in any way the functions of an attorney and counsellor of the Court, and further ordered that the clerk should be authorized to substitute the name of any attorney of the Court in place of the plaintiff in any case, upon the receipt of the request in writing from the claimant therein, or from his legal representatives, to that effect. (See orders of the Court, Exceptions, Record, pp. 12, 13, 14.)

At the trial, which was before the Court without a jury, the plaintiff asked the Court to make the following rulings: —

First. That the Court of Commissioners of Alabama Claims had no authority to make the order made by them touching the plaintiff on July 29, 1885, and that the same was unlawful.

Second. That the defendant French having admitted that he concurred with the other defendants in issuing and enforcing said order of July 29, 1885, and that the plaintiff was thereby injured, the plaintiff is entitled to recover from said French compensation for all losses sustained by him as the direct result of said order of July 29, 1885, and of the enforcement thereof from thence to December 31, 1885.

Third. That more than two years having elapsed after the reorganization of the Court of Commissioners of Alabama Claims, under the Act of June 5, 1882, and after the appointment of the defendant French and the other defendants, but prior to July 24, 1885, the said French and the other defendants had, on said last-mentioned day and thereafter, no lawful authority to act as judges of said Court of Commissioners of Alabama Claims.

But the Court declined so to rule, found the facts to be as stated in the printed record, ruled that the action could not be maintained, and found for the defendant. (See Record, p. 15.)

Exceptions were taken by the plaintiff (Record, pp. 8–15), and the exceptions entered in the Supreme Judicial Court of the Commonwealth, where the case was argued, and the exceptions overruled June 21, 1889. On July 1, 1889, judgment for costs was entered for the defendant.

The plaintiff sued out a writ of error to the Superior Court July 9, 1889, which was entered in this Court at the present term. Defendant in error files, under Rule 6 of the Court, the motions to dismiss and to affirm, printed on the first page of this brief.

Issues Raised by Motions.

The issues raised are: —

First. Under the motion to dismiss, does the record show that the validity of any Statute of, or an authority exercised under, the United States was drawn in question, and the decision was against its validity?

Second. Under the motion to affirm, even if this Court has jurisdiction, was the decision of the State Court so manifestly right that the case ought not to be held for further argument, but justifies the affirmance of the judgment?

Jurisdiction and Powers of the Judges of the Court of Commissioners of Alabama Claims.

Both these motions require an examination of the Acts of Congress creating the Court, and defining the duties and powers of the judges. It was a Court of statutory jurisdiction and powers, like all the subordinate Federal Courts, but was given full power to exercise and enforce its statutory jurisdiction.

The Act of 1882, under which defendant was appointed judge, is entitled "An Act re-establishing the Court of Commissioners of Alabama Claims, and for the distribution of the unappropriated moneys of the Geneva Award." Its first section provides "that the Court of Commissioners of Alabama Claims created, etc., is hereby re-established in the manner, and with the obligations, duties, and powers, imposed and conferred" by the Act of 1874. The second section provides "the number of judges for said Court;" one of them is designated "the presiding justice;" "the agreement of two of the judges shall be necessary to decide any question arising before said Court." "A clerk and reporter shall be appointed, and counsel for the United States designated." The marshal of the United States shall perform prescribed duties. The third section provides that "the judges of the Court hereby re-established" shall organize, "and the Court so organized shall exist two years;" all claims were to be verified and "filed with the clerk of said Court." The fourth section provides that "the practice and proceedings" established by the former Act shall be followed, except as changed herein. The fifth and sixth sections define the claims to be allowed. The seventh section provides that "the judgments rendered by said Court" shall be paid by the Secretary of the Treasury. The eighth section provides the order in which such "judgments" shall be paid. The ninth section provides that "the said Court, after all its judgments and decisions have been rendered," shall transmit a list of them to the Secretary of State, who was to transmit it to the Treasury Department.

Act of June 5, 1882, 22 Sts. at Large, 98.

Throughout the Act the tribunal is designated as a "Court," the officers as "judges," and their decisions as "judgments."

This Court had "the obligations, duties, and powers imposed and conferred" on the former Court by Act of June 23, 1874, 18 Sts. at Large, 245.

That was "an Act for the creation of a Court for the adjudication and disposition of certain money," etc. The first section provides "that the President of the United States be, and he is hereby, authorized to nominate, and by and with the advice of the Senate appoint, five suitable persons, *who shall constitute a Court* to be known as the 'Court of Commissioners of Alabama Claims.' Each of said judges and other officers of said Court shall take the oath of office prescribed by law to be taken by all officers of the United States. The President shall designate, by appointment, one of the said judges to be presiding judge of the Court; and all vacancies which may occur in said Court by reason of death, resignation, or inability, or refusal or neglect of any or either of said judges to discharge the duties of his position, shall be filled in the same manner as vacancies occurring in offices under the Constitution of the United States are filled."

The second section provides that the judges shall meet and organize the Court in the city of Washington, where the said Court shall hold its sittings; and three judges shall constitute a quorum, and the agreement of three shall be necessary to decide any question arising before said Court.

The third section provides "that the said Court be, and it is hereby, authorized to publish notice of its sessions, and to make all needful rules and regulations, not contravening the laws of the United States or the provisions of this Act, for regulating the forms and mode of procedure before the said Court, and for carrying into full and complete effect the provisions of this Act. Such rules and modes of procedure shall conform, as far as practicable, to the mode of procedure and practice of the Circuit Courts of the United States, — and the said Court is hereby vested with the same powers now possessed by the Circuit and District Courts of the United States to compel the attendance and testi-

mony of parties, claimants, and witnesses, to preserve order, and to punish for contempts, — and in all claims which shall be presented before the said Court the person or persons prosecuting such claim shall be deemed the complainant, and the United States shall be deemed the respondent; and said Court shall have power to compel the production of any book or papers deemed material to the consideration of any claim or matter pending therein."

Other sections of the Act provide for a clerk and reporter (section 4); for the designation by the President of a counsellor-at-law, admitted to practise in the Supreme Court of the United States, to appear as counsel in behalf of the United States, under the supervision of the Attorney-General (section 5). "The marshal of the United States for the District of Columbia, or his deputies, shall serve all process issued by said Court, preserve order in the place of sitting, and execute the orders of said Court" (section 6); the Court was to exist one year (section 8); the judges were given power to administer oaths, and any false oath subjects the person to the same penalty for perjury "as if such false oath or affirmation had been taken in a judicial proceeding in any of the Courts of the United States" (section 10); there was to be a seal of the Court (section 13); judgments were to be reported to the Secretary of State, and the list transmitted by him to the Secretary of the Treasury (section 14); the records of the Court were to be preserved (section 16); that claimants would be represented by attorneys is expressly recognized (section 18).

These Acts of the Congress clearly created more than a mere commission to adjudicate claims. These claims were many in number and amount, presenting many intricate questions of law and fact, and for their consideration the Congress did, what it said it did, "constitute a Court." That Court early so decided. In Schreiber *vs.* United States (No. 740), Rep. 124, Judge Porter, speaking for the Court, said, "The Court of Commissioners of Alabama Claims was, by the Act of June 23, 1874, constituted a Court, not in form merely, but in every essential attribute of a Court. It is called a Court, and its members are

designated as judges. It is required to meet and organize as a Court. It is empowered to compel the attendance of parties and witnesses, to administer oaths, to preserve order, to punish for contempts, and to enforce the production of books and papers. It is required to hear and consider the allegations and proofs of the parties, to keep a record of its proceedings, to enter judgments, and to exercise for certain purposes the powers possessed by the Circuit and District Courts of the United States. Its jurisdiction is certainly limited to a particular class of subjects; but, within the range of its jurisdiction, its power to hear, to decide, and to enter judgment is as complete as could be claimed for any Court of the most enlarged jurisdiction."

"It is to be observed that, unlike tribunals heretofore called into existence by the authority of Congress, to distribute to citizens of the United States a fund obtained by the government of the United States from a foreign sovereign, this is not a board of 'commissioners' simply, but a *Court*."

Haskett, Geneva Award, p. 3.

The United States Supreme Court has recognized the fact that the Court of Commissioners of Alabama Claims was a Court, before which claims necessarily must be presented by attorneys, in

Bachman *vs.* Lawson, 109 U. S. 659, 664.

II.

The judges of the Court were lawfully in office in July, 1885.

The Act of 1884 provided that the existence of the Court be continued and extended to December 31, 1885, "with the same effect, and no other, as if said last-named day had been named

in the said Act for the termination of the powers of said Court, and said Act is hereby continued in force during the period of extension hereby authorized."

Act of June 3, 1884, 23 Sts. at Large, 33.

The judges of the Court were acting under this Act in July, 1885. They were commissioned as judges of the Court generally, with no time limitation, and held office during the duration of the Court. The original limit of two years for the life of the Court was extended before expiration, and the effect was precisely the same as though the extended duration was the originally fixed duration in the Act of 1882. No new appointment of judges was necessary. The extension Act created neither an office nor a vacancy in office: it merely extended its term.

In the same way, the duration of the former Court of 1874 was twice extended without re-appointment of the judges.

Act of Dec. 24, 1875, 19 Sts. at Large, 1.
Act of July 22, 1876, 19 Sts. at Large, 96.

As they were "judges" of an inferior Court of the United States, their term of office was necessarily fixed by the Constitution as "during good behavior." In a Court of limited duration this means during the life of the Court. As long as the Court continued, they had a constitutional right to act as the judges of it.

U. S. Constitution, Art. 3, § 1.
Story, Constitution, § 1627.

If these judges were not lawfully in office in July, 1885, it is difficult to see how the plaintiff was damnified by their action. Not only was it void, but all the judgments in claims represented by plaintiff would have been equally void. What did he lose in being prevented from practice before judges who had no

power to act? If the claim in the 3d ruling requested is correct, there were no judges, and therefore in effect no Court, at that time, and the plaintiff was merely forbidden to practise in a Court that had ceased to exist.

No Federal Question appears from the Record to have been raised and decided adversely to the Validity of any Statute or Authority of the United States.

1. It is a familiar principle, repeatedly affirmed by this Court, that there is no presumption in favor of its jurisdiction, under U. S. Revised Statutes, § 709, over a writ of error to review the decision of the State Court. The facts upon which such jurisdiction rests must in some form appear in the record presented.

"To give us jurisdiction under § 709 of the Revised Statutes, because of a denial by a State Court of any title, right, privilege, or immunity claimed under the Constitution, or any treaty or Statute of the United States, it must appear upon the record that such title, right, privilege, or immunity was specially set up or claimed at the proper time in the proper way. To be reviewable here, the decision must be against the right so set up or claimed." — [Waite, C. J.]

Spies *vs.* Illinois, 123 U. S. 131, 181.
Brooks *vs.* Missouri, 124 Id. 394.
Ocean Ins. Co. *vs.* Polleys, 13 Peters, 137.
Crowell *vs.* Randall, 10 Id. 368.
Williams *vs.* Norris, 12 Wheat. 117.
Miller *vs.* Nichols, 4 Id. 311.

The only Federal question here was raised, not by the plaintiff in denying, but by the defendant in claiming, an authority under certain Acts of Congress. Defendant claimed, and the Court decided that he rightly claimed, an authority from Congress. Plaintiff claimed, and asked the Court to find, no Federal right or authority in plaintiff, but, on the contrary, denied the right in the defendant. The three rulings requested by plaintiff all claim that the act of defendant was unauthorized and unlawful. They set out no Federal right in plaintiff, but deny it in defendant. (See Rulings, Exceptions, Record, p. 15.)

A similar case came before this Court in 1878, in

Lange *vs.* Benedict, 99 U. S. 68.

Judge Benedict of the United States District Court, acting under Federal authority, having pronounced a sentence unauthorized by law (*Ex parte* Lange, 18 Wall, 163), was sued by Lange. The State Court decided defendant was not liable. A writ of error to the State Court was dismissed upon motion, the Court holding that no Federal question was presented by the record.

2. But it is clear that, even if the record properly presents a Federal question, that question was not decided *adversely* to the validity of any Statute of, or authority exercised under, the United States. It is familiar law that the jurisdiction of this Court over error to a State Court depends not only upon the existence of some Federal question, but upon a decision adverse to the national law or authority.

"It is not every misconstruction of an Act of Congress by a State Court that will give this Court appellate jurisdiction. It is where the party claims some title, right, privilege, or exemption

under an Act of Congress, and the decision is against such right, title, privilege, or exemption."

Montgomery *vs.* Hernandez, 12 Wheat. 129, 132.

"It is only when, in such a case, the decision is against the authority, that this Court has revisory jurisdiction."

Ryan *vs.* Thomas, 4 Wall, 603.
Rector *vs.* Ashley, 6 Id. 142.

If the *pleadings* are examined, it will be seen that the plaintiff therein raises no claim under a Federal Statute or authority. The gravamen of his complaint is, that the defendants — either as judges, or falsely pretending to act as judges — unlawfully, wrongfully, and maliciously made an order prohibiting the plaintiff from appearing and acting before said Court, whereby plaintiff was damnified.

Declaration, Exceptions, Record, p. 7.

The defendant made a general denial, and thereby raised the issue of his right to act as judge and pass the order complained of, basing his authority upon the Acts of Congress creating and re-establishing the Court of Commissioners of Alabama Claims. The Court, in sustaining his authority, decided, not against, but in favor of, the validity of an authority claimed under a Statute of the United States.

If the three *rulings* requested by plaintiff and refused by the Court are examined, it will appear that the decision was not in any way adverse to the validity of the authority exercised by the defendant as a Federal officer.

Plaintiff claimed, (1) that the judges had no authority to make the order: (2) that, on account of the order, plaintiff can

recover damages; (3) that the term of the judges had expired when they made the order.

Rulings requested, Exceptions, Record, p. 15.

In refusing these rulings, in what way or degree did the Court decide against a Statute of, or authority exercised under, the United States?

Nor does the *petition for the writ of error* allege any decision of the Court adverse to the Federal authority. It merely alleges that "the decision of said State Court was adverse to the plaintiff's contention upon all of said Federal questions." That the decision was adverse to him, is clearly immaterial.

Petition for Writ, Record, pp. 1, 2.

The *eleven assignments of error* merely, in different language, allege for error that the State Court held that defendant had the Federal jurisdiction and authority exercised.

Assignments of Error, Record, pp. 2, 3.

The opinion of the Supreme Judicial Court of the State, printed in full as an Appendix hereto, also shows that the whole question addressed to and decided by the Court was a question of the jurisdiction and powers of these judges; and the Court, in deciding for the defendant, necessarily found that the Federal jurisdiction and powers claimed by them existed. No possible question upon the record was decided adversely to any Statute or authority of the United States.

See opinion in Appendix.

Upon a writ of error to a State Court, this Court can examine the recorded opinion to ascertain the ground of the judgment.

Kreiger *vs.* Railroad Co., 125 U. S. 39.

On Motion to Affirm the Judgment of the Superior Court.

Defendant in error joins with his motion to dismiss for want of jurisdiction, a motion to affirm on the ground that the decision of the State Court was manifestly right.

"When, under Section 5 of our Rule 6, a motion to affirm is united with a motion to dismiss for want of jurisdiction, the practice has been to grant the motion to affirm when the question on which our jurisdiction depends was so manifestly decided right that the case ought not to be held for further argument." — [Waite, C. J.]

Spies *vs.* Illinois, 123 U. S. 131, 164.
Arrowsmith *vs.* Harmoning, 118 Id. 194.
Church *vs.* Kelsey, 121 Id. 282.

That the Court of Commissioners of Alabama Claims was a Court duly established by Act of Congress, and that the judges were lawfully in office at the time of the Act complained of, have been shown by the Acts of Congress already referred to and discussed.

I.

The Court of Commissioners of Alabama Claims, as a Court, had power to regulate the admission and removal of attorneys practising before it.

The jurisdiction of the Court was statutory, but was supreme, final, and exclusive within and for the purposes of the Acts of the Congress creating it. No appeal from its decisions was provided. In the exercise of its jurisdiction it was expressly authorized to make "all needful rules and regulations," to "conform, as far as practicable, to the mode of procedure and practice of the Circuit Courts of the United States" (Act of 1874, § 3). As a necessary incident to the exercise of its jurisdiction, the Court must have attorneys before it, and, in the absence of Statute provision, must regulate their admission by rule. The Court provided for their admission by Rule 5, and the plaintiff was admitted to practise under it. (See Rule 5, Exceptions, Record, pp. 8, 9.)

The persons so admitted made the bar of the Court. The mode of admission, whether on oath, signing the roll, or on simple motion, is immaterial. This was wholly matter for regulation by the Court. Providing for the admission of attorneys was merely exercising the right and duties of the Circuit Courts. It clearly was not the intention of the Congress, in dealing with thousands of claimants to a fund of fifteen million dollars, with no protection to the government in the presentation of claims other than the cross-examination of claimants' witnesses, and argument by government counsel, to provide a Court powerless to admit and control attorneys before it, and helpless to maintain its dignity or protect its privacy in consultation.

1. Under the Acts of the Congress, the Court had the same right to regulate admission of attorneys as the Circuit Courts.

And the power to admit by necessary implication gives the

right to remove for cause addressed to the discretion of the Court. "Both the admission and removal of attorneys are judicial acts. It has been so decided in repeated instances."— [FIELD, J.]

Randall *vs.* Brigham, 7 Wall, 523, 535.
Ex parte Garland, 4 Wall, 333.
Ex parte Secombe, 19 How. 9.

"The power of the Court to admit an attorney implies the power to strike off his name from the roll, and the Court may either suspend or expel."

In re Wall, 13 Fed. Rep. 320, note.
In re Wall, 107 U. S. 265.
Bradley *vs.* Fisher, 13 Wall, 335.
Ex parte Burr, 9 Wheat. 529.

In *Ex parte* Secombe, the Court, referring to an earlier case, said: "The removal of the attorney and counsellor took place in a District Court of the United States exercising the powers of the Circuit Court; and in a Court of that character the relations between the Court and the attorneys and counsellors who practise in it, and their respective rights and duties, are regulated by the common law. And it has been well settled by the rules and practice of common-law Courts that it rests exclusively with the Court to determine who is qualified to become one of its officers, as an attorney and counsellor, and for what cause he ought to be removed."— [TANEY, C. J.]

In Wall's Case (107 U. S. 265) the Court held that the Circuit Court for the Florida District had power to remove an attorney by summary proceeding.

In Bradley *vs.* Fisher it was held that the Supreme Court of the District of Columbia had the right.

And see *Ex parte* Burr, 9 Wheat. 529.

The right was exercised by Circuit Judge McCrary in

Ex parte Cole, 1 McCrary, 405.

2. This power to remove an attorney from practice in the Circuit Court is distinct from any statutory or common-law power to punish for contempt. Every attorney admitted to practice becomes an officer of the Court, and liable to removal by the summary jurisdiction of the Court for misbehavior, especially where the misconduct affects the dignity and proceedings of the Court. This is an inherent, necessary power in the Court, wholly outside of, and in addition to, any power to punish for contempt. The removal of an attorney from practice is not to punish him, but to protect the Court.

"The power to disbar an attorney proceeds on very different grounds from the power to punish for contempt. The power is possessed by all Courts which have authority to admit attorneys to practice. . . . It is one thing to remove from office for unfitness, and another to punish for contempt. . . . The end to be obtained is protection, not punishment."

Weeks, Attys. at Law, p. 30.

"The authority of the Court over its officers, and the power to remove an attorney for misconduct or malpractice, although conferred in express terms by the Statute, are nevertheless incident to all common-law Courts of general jurisdiction, and the proceedings in such cases are to be deemed to be taken according to the course of the common law." — [BIGELOW, C. J.]

Randall, Pet., 11 All. 472.

"Nor can a judgment of removal be properly and technically considered as a punishment for a crime or offence. In *Ex parte* Brounshall, Cowp. 829, Lord Mansfield said: 'To strike an

attorney from the roll is not in the nature of a punishment, — it is done because he is an unfit person to practise as an attorney; the Court exercise their discretion whether a man, whom they formerly admitted to the bar, is a proper person to be continued on the roll.'" — [BIGELOW, C. J.]

Randall, Pet., 11 All. 473, 480.

"The power to disbar an attorney proceeds on very different grounds" from punishment for contempt.

Ex parte Robinson, 19 Wall, 505, 512.

And so "the proceeding to strike an attorney from the roll is one within the proper jurisdiction of the Court of which he is an attorney, and does not violate the constitutional provision which requires an indictment and trial by jury in criminal cases; it is not a criminal proceeding, and not intended for punishment, but to protect the Court from the official ministration of persons unfit to practise as attorneys therein. Such a proceeding is not an invasion of the constitutional provision that no person shall be deprived of life, liberty, or property without due process of law." (Head note.)

Ex parte Wall, 107 U. S. 265.
Randall *vs.* Brigham, 7 Wall, 541.

Section 725 of the United States Revised Statutes, therefore, does not apply. That Statute merely limits and regulates the power of the Courts *to punish* for contempt. The Court can fine or imprison for contempt. Its inherent power to protect itself by removing attorneys for conduct injurious to the dignity or business of the Court is not affected by the Statute. Otherwise, neither the United States Supreme Court nor any Circuit Court can remove an attorney. Such construction is contrary to the acts and decisions of the Court in the cases cited.

If the Statute has any application to the case of removal of an attorney from practice, it is merely cumulative, and not intended to interfere with the power of the Court to protect itself against insult or misconduct from its attorneys.

Of a somewhat more elaborate law of the Territory of Minnesota, the United States Supreme Court said: "It is true that, in the Statutes of Minnesota, rules are prescribed for the admission of attorneys and counsellors, and also for their removal. But it will appear upon examination, that, in describing some of the offences for which they may be removed, the Statute has done but little, if any thing, more than to enact the general rules upon which the Courts of common law have always acted, and have not, in any material degree, narrowed the discretion they exercised. Indeed, it is difficult, if not impossible, to enumerate and define with legal precision every offence for which an attorney or counsellor ought to be removed. And the Legislature, for the most part, can only prescribe general rules and principles to be carried into execution by the Court with judicial discretion and justice as cases may arise." — [TANEY, C. J.]

Ex parte Secombe, 19 How. 9, 14.

II.

As the Court had power to remove attorneys, the exercise and mode of exercise of the right were matters wholly within the discretion and control of the Court.

"It is extremely desirable that the respectability of the bar should be maintained and that its harmony with the bench should be preserved. For these objects some controlling power, some discretion, ought to reside in the Court. This discretion ought to be exercised with great moderation and judgment, but it must

be exercised; and no other tribunal can decide, in a case of removal from the bar, with the same means of information as the Court itself. If there be a revising tribunal which possesses controlling authority, that tribunal will always feel the delicacy of interposing its authority, and would do so only in a plain case." — [MARSHALL, C. J.]

Ex parte Burr, 9 Wheat. 529, 530.

As the Court had the right to remove attorneys from practice for cause, the manner of exercising the right cannot be questioned here. It was for the Court alone to say what conduct affected its dignity and justified the exercise of its power, and to determine the mode of proceeding.

"The question before us is, not whether the Court erred, but whether it had any jurisdiction to disbar the petitioner for the alleged contempt."

Ex parte Robinson, 19 Wall, 511.

Even if the conduct complained of had not been in the presence of all the judges, the Court could regulate the mode of its action in removing the attorney.

"The information imparted by the letter was sufficient to put in motion the authority of the Court, and the notice to the plaintiff was sufficient to bring him before it to explain the transaction to which the letter referred. . . . It is not necessary that proceedings against attorneys for malpractice or any unprofessional conduct should be founded upon formal allegations against them. . . . All that is requisite to their validity is, that when not taken for matters occurring in open Court, in the presence of the judges, notice should be given to the attorney of the charges made, and opportunity afforded him for explanation and defence. The manner in which the proceeding shall be conducted, so that it be without oppression or unfairness, is a matter of judicial record." — [FIELD, J.]

Randall *vs.* Brigham, 7 Wall, 523, 540.

In the case at bar the conduct of plaintiff was in the presence of all the judges while engaged in consultation, and therefore within their personal knowledge. The plaintiff was given a day's notice and an opportunity to be heard, of which he availed himself. The only possible witnesses were himself and his client, Berthoud, and the affidavits of both were presented to the Court. Counsel for plaintiff argued upon the law and the evidence. All the facts were before the Court; the law was presented; and, after several days of consideration, the Court ordered the removal of the plaintiff from its roll of attorneys.

See *Ex parte* Terry, 128 U. S. 289, 309.
Savin, Petitioner, 131 Id. 267.

III.

Even if the action of the Court was unjustified or illegal, no action of law lies against the judges.

The act of removal was a judicial act of the judges of a Court in open session. That Court was not an inferior tribunal. While, like the Circuit and District Courts, its jurisdiction was statutory, it was supreme in the exercise of that jurisdiction. There is no evidence of malice (even if material) in its action. The plaintiff's action is to recover damages for this judicial act. His only remedy, if any, was *mandamus* for re-instatement as an attorney.

Ex parte Robinson, 19 Wall, 505.

No action for damages lies against the judges.

"It is a general principle, applicable to all judicial officers, that they are not liable to a civil action for any judicial act done within their jurisdiction. In reference to judges of limited and

inferior authority, it has been held that they are protected only when they act within their jurisdiction. If this be the case with respect to them, no such limitation exists with respect to judges of superior or general authority. They are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, unless perhaps where the acts in excess of jurisdiction are done maliciously or corruptly. This doctrine is as old as the law, and its maintenance is essential to the impartial administration of justice." — [FIELD, J.]

Randall *vs.* Brigham, 7 Wall. 536.

The Court went still farther in Bradley *vs.* Fisher, 13 Wall, 335.

"Judges of Courts of record of superior or general jurisdiction are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, and are alleged to have been done maliciously or corruptly. A distinction as to their liability is made between acts done by them in excess of their jurisdiction, and acts done by them in the clear absence of all jurisdiction over the subject-matter." — [FIELD, J.]

This principle, that a judicial officer, acting within his jurisdiction, is not subject to action, has been strongly affirmed.

Pratt *vs.* Gardner, 2 Cush. 63.
Chickering *vs.* Robinson, 3 Id. 543.
Raymond *vs.* Bolles, 11 Id. 315.
Wells *vs.* Stevens, 2 Gray, 115.
Kelly *vs.* Dresser, 11 All. 31.

It is submitted that the rulings requested by the plaintiff were properly refused, and that the finding of the Court for the defendant was manifestly correct.

CHAS. THEO. RUSSELL, JR.,
Counsel for Defendant French.

APPENDIX.

JEROME F. MANNING *vs.* ASA FRENCH.

Opinion of Supreme Judicial Court of Massachusetts, June 20, 1889.

FIELD, J. The Act of Congress, approved June 5, 1882, being chapter 195, St. of 1882, provided, "that the Court of Commissioners of Alabama Claims, created by chapter four hundred and fifty-nine of the laws of the Forty-third Congress, is hereby re-established, in the manner, and with the obligations, duties, and powers, imposed and conferred by said chapter, except as changed or modified by this Act" (§ 1); "that the number of judges for said Court, to be nominated and appointed in the mode directed by section two of said chapter, shall be three, each to receive the compensation provided by section four of said chapter" (§ 2); "that the judges of the Court hereby re-established shall convene and organize, in the city of Washington, as soon as practicable after their appointment, and the Court so organized shall exist two years" (§ 3); and "that the practice and proceedings established and directed by said chapter four hundred and fifty-nine shall be followed and had in regard to all claims provable under this Act," etc. (§ 4).

The Act of June 23, 1874, which is the Act referred to as chapter four hundred and fifty-nine of the laws of the Forty-third Congress, provided for the appointment by the President, by and with the advice of the Senate, of five suitable persons, "who shall constitute a Court, to be known as the 'Court of Commissioners of Alabama Claims,'" each of whom "shall take the oath of office prescribed by law to be taken by all officers of the United States" (§ 1); and that "said judges shall meet and organize said Court in the city of Washington, where the said

Court shall hold its sittings" (§ 2). The third section provided "that the said Court be, and it is hereby, authorized to publish notice of its sessions, and to make all needful rules and regulations, not contravening the laws of the United States or the provisions of this Act, for regulating the forms and modes of procedure before the said Court, and for carrying into full and complete effect the provisions of this Act. Such rules and mode of procedure shall conform, as far as practicable, to the mode of procedure and practice of the Circuit Courts of the United States; and the said Court is hereby vested with the same powers now possessed by the Circuit and District Courts of the United States to compel the attendance and testimony of parties, claimants, and witnesses, to preserve order, and to punish for contempts," etc. The Statute also provided for the appointment of a clerk and a shorthand reporter, and the designation of a counsellor-at-law to act as counsel for the United States. By section 8 of this Act the Court was to continue to exist "for one year from the date of its first convening and organizing;" and if it was found impracticable for the Court to complete its work within the year, the President was authorized by proclamation to extend the existence of the Court for a further period not exceeding six months. The existence of this Court was extended, by proclamation of the President and by subsequent Acts of Congress, until January 1, 1887, when it expired by limitation of time. Proclamation of June 2, 1875, 19 U. S. Sts. at Large, 661; U. S. St. of Dec. 24, 1875, 19 U. S. Sts. at Large, 1; U. S. St. of March 6, 1876, 19 U. S. Sts. at Large, 6; U. S. St. of July 22, 1876, 19 U. S. Sts. at Large, 96.

By the Statute of June 5, 1882, the Court as re-established was to exist for two years; but by the Act of June 3, 1884, 23 U. S. Sts. at Large, 33, it was provided that the existence of the Court "be, and the same is hereby, continued and extended to the thirty-first day of December, in the year eighteen hundred and eighty-five, with the same effect, and no other, as if said last-named day had been named in the said Act for the termination of the powers of said Court; and said Act is hereby continued in force during the period of extension hereby authorized."

The complaint of the plaintiff is, that the judges of this Court, of whom the defendant was one, on July 25, 1885, passed an order as follows: "Ordered, that for the reasons set forth in the rule to show cause, and in the statement accompanying this decree and made a part thereof, the said Jerome F. Manning be, and hereby is, prohibited from appearing and acting in this Court in relation to any matter or business therein pending, and from exercising in any way the functions of an attorney and counsellor of this Court. This decree to stand until the further order of the Court." The reasons are set out in the preamble to the order, which is made a part of the record. It appeared that the Court, established by the Act of June 23, 1874, had adopted rules, of which Rule V. was as follows: "Any person of good moral character admitted to practise as attorney or counsel in the Supreme Court of any State or Territory, or the District of Columbia, or in any of the Federal Courts, on filing with the clerk a written statement of the date and place of such admission, with his name and post-office address in full, may, on motion, be admitted to practise in this Court. The plaintiff had been duly admitted as an attorney in the Courts of this Commonwealth and in the Supreme Court of the United States, and in the Court of Claims, and was on January 26, 1875, on motion, admitted to practise in the Court of Commissioners of Alabama Claims. The Court, which was re-established by the Act of June 5, 1882, adopted the old rules, and made certain additional rules, one of which is as follows: "Rule XIV. All attorneys admitted to practise in the Court of Commissioners of Alabama Claims, as created under the law of Congress approved June 23, A.D. 1874, will be recognized as attorneys in this Court, re-established under the law of Congress approved June 5, 1882." The plaintiff was recognized as an attorney by the Court as re-established, and as such had filed and was prosecuting many claims before the Court. It does not appear that the plaintiff himself was a claimant in any cause, or that he had any business before the Court except as an attorney for others.

The plaintiff contends that the judges who, in fact, composed the Court on July 25, 1885, were not lawfully in office, and particularly that the defendant French was not then lawfully in

office. It appears that French was commissioned and qualified as judge "on or about July 5, 1882." The argument is, that, as by the Act of June 5, 1882, the existence of the Court was limited to two years, the commission of Judge French had expired before July 25, 1885, when the Court passed the order of which the plaintiff complains. It is contended that, when the existence of the Court was continued beyond two years by the Statute of June 3, 1884, it was necessary that the judges be re-appointed in order lawfully to hold their office during the continued existence of the Court.

We deem it unnecessary to consider whether the plaintiff's rights in the matter of his complaint would be greater against a judge *de facto* than against a judge *de jure*. It does not appear that the judges were originally commissioned for any definite time. The Acts of Congress do not prescribe any definite term of office. If they were judges within the meaning of section 1 of Article III. of the Constitution of the United States, they held their offices during good behavior; if not, they held their offices during the pleasure of the President, subject to the laws regulating the tenure of office. In either case, they would cease to hold their offices when the Court ceased to exist, and they would continue to hold their offices while the Court continued to exist, unless they were lawfully removed. It was within the power of Congress, by Statute, to extend the existence of the Court before the original term of its existence expired, and the judges, by virtue of their original appointment, continued to be judges while the Court continued to exist. The plaintiff contends that the Court had no power to admit attorneys to practise before it, and no power to prevent any person from practising before it. One argument is, that this was not an inferior Court of the United States, within the meaning of section 1, Article III., of the Constitution of the United States. We assume, without consideration, that it was not such a Court, and that, like the Courts of the Territories of the United States, it had only the powers which the Statutes conferred upon it.

American Ins. Co. *vs.* Canter, 1 Pet. 511.
Clinton *vs.* Englebrecht, 13 Wall. 434.

Under the powers granted by the Acts of Congress, and especially under the power granted by section 3 of the Act of June 23, 1874, we are of opinion that the Court, having authority to make rules for regulating the forms and modes of procedure before it, and for carrying into full and complete effect the provisions of the Act, had, as included in this grant of power, the authority to make rules for the admission of persons to prosecute claims before the Court as agents or attorneys for claimants. It is manifest that it was not intended by the Statutes that claimants should be compelled personally to present their claims. The Court established by the Act of June 23, 1872, had established and published rules of procedure, including a rule for the admission of attorneys; and Congress, by the Act of June 5, 1882, re-established the Court, with the powers conferred by the former Act, and provided that the practice and proceedings established and directed by that Act should be followed, "except as changed or modified by this Act;" and no change or modification was made by the Act of June 5, 1882, in the power of the Court to make all needful rules and regulations.

If the Court had the power to prescribe by rule the qualification of attorneys to be admitted to practise before it, the Court had the power to determine whether the persons who asked to be admitted had the requisite qualifications, and whether persons who had been admitted retained the requisite qualifications. The power of the Court to determine whether an attorney already admitted was a fit person to remain an attorney, is involved in the general power to make rules for the admission of attorneys. The plaintiff has not been deprived of his office of attorney-at-law by the order complained of. The fact that he had been admitted as an attorney-at-law in the Supreme Court of the United States, in the Courts of Massachusetts, and in the Court of Claims of the United States, did not confer upon him the right to practise before the Court of Commissioners of Alabama Claims, and the order complained of has not removed him from the bar of any of those Courts. The proceedings against the plaintiff were not in the nature of proceedings for contempt. The rule to show cause was, that he appear and

"show cause why he should not be stricken from the rolls of attorneys and counsellors-at-law authorized to practise before this Court, . . . because of flagrant unprofessional conduct." Congress, as we construe the Statutes, saw fit to grant to the Court of Commissioners of Alabama Claims the power to determine who should practise before it as attorneys; and in the exercise of this power, after notice to the plaintiff and a hearing, that Court prohibited the plaintiff from further exercising before it the functions of an attorney of the Court. Congress had the right to confer this power exclusively upon that Court, to be exercised as a judicial power, and the judges of the Court are not liable to individuals for judicial acts done within their jurisdiction.

Randall *vs.* Brigham, 7 Wall, 523.
Randall, Petitioner, 11 Allen, 473.

Exceptions overruled.